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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
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Item 1 (c) of the provisional agenda

ORGANIZATION OF WORK: METHODS OF WORK OF THE SUB-COMMISSION

Final working paper on methods of work of the Sub-Commission submitted by Mr. Ribot Hatano pursuant to Sub-Commission decision 1998/108

1. At its forty-eighth session, the Sub-Commission, in its decision 1996/114, mindful of the need for and merit of having a consolidated set of the rules of procedure that are fully applicable to it, decided to entrust Mr. Ribot Hatano with the task of preparing, without financial implications, a working paper relating to the methods of work of the Sub-Commission, to be submitted to it at its forty-ninth session as a basis for discussion, which would contain:

(a) A compilation of the existing guidelines, decisions and any other instruments applicable to the procedures of the Sub-Commission;

(b) A list of the procedural questions which need to be resolved by the Sub-Commission.

2. At its forty-ninth session, the Sub-Commission took note with appreciation of the working paper submitted by Mr. Hatano (E/CN.4/Sub.2/1997/3) and requested him to submit a revised working paper at its next session (resolution 1997/16). Unfortunately, the Sub-Commission was unable to examine the revised working paper (E/CN.4/1998/Sub.2/3) at its fiftieth session, and adopted decision 1998/108 in which it requested Mr. Hatano to take into account the comments received, the remarks made on this subject during the session and the note by the Chairman on enhancing the effectiveness of the Sub-Commission (E/CN.4/Sub.2/1998/38) in preparing a further revision of his working paper and to submit it at the fifty-first session of the Sub-Commission.

3. The present document is submitted pursuant to decision 1998/108 of the Sub-Commission.

Introduction

4. At the very outset, it must be noted that the Sub-Commission is fully aware of the necessity of submitting the following two items, through the Commission on Human Rights, to the Economic and Social Council for approval before they can be formally applied to the Sub-Commission:

(a) Any change in the wording of the rules of procedure of the functional commissions of the Economic and Social Council;

(b) Any provision of the guidelines, decisions, practices, etc. which might substantially alter the gist of the rules of procedure.

On the other hand, the Sub-Commission considers that the guidelines, decisions, practices, etc. that are purely supplemental in character and not in contradiction with the rules of procedure would be applicable to the Sub-Commission without seeking the approval of the Economic and Social Council. It is on this understanding that the author has prepared this new and final working paper.

5. The sessional working group on the methods of work chaired by Mr. Bossuyt examined, and agreed in 1997, on the first 38 rules of the last working paper, which are almost identical to the present ones. It is advisable, therefore, that the Sub-Commission concentrate on the examination of the remaining part contained in the present working paper.

6. For the convenience of the readers, those guidelines, decisions, practices, etc. which relate to more than one subject are listed, as in the last working paper, under all subjects concerned. For example, a decision providing for "the time limit for the right of reply" is reproduced both under "speaking time" and "right of reply".

7. The draft compilation of rules of procedure, guidelines, decisions and practices applicable to the Sub-Commission is attached as an annex.

Annex

DRAFT COMPILATION OF RULES OF PROCEDURE, GUIDELINES, DECISIONS AND PRACTICES APPLICABLE TO THE SUB-COMMISSION

I. SESSIONS

Rule 1 (Number of sessions)

Unless the Economic and Social Council (the Council) decides otherwise, the Sub-Commission shall hold a session annually.

Rule 2 (Date of opening)

1. The date of opening of each session of the Sub-Commission shall be fixed by the Council, taking into account any recommendation of the Sub-Commission and in consultation with the Secretary-General.

2. In exceptional cases, the date of opening of a session may be altered by the Secretary-General in consultation with the Committee on Conferences of the General Assembly and, whenever practicable, with the Chairperson of the Sub-Commission.

Practice 1

The Sub-Commission observes, at the opening of each session, a minute of silence in honour of victims of all forms of violations of human rights in all regions of the world. [decision 1994/103 amended in 1997]

Rule 3 (Place of sessions)

The session shall be held at the Headquarters of the United Nations unless another place is designated by the Council, taking into account any recommendation of the Sub-Commission and in consultation with the Secretary-General.

Rule 4 (Notification of opening date of sessions)

The Secretary-General shall notify the members of the Sub-Commission of the date and place of the first meeting of each session at least six weeks in advance.

II. AGENDA

Rule 5 (Drawing up of the provisional agenda)

1. The Secretary-General, in consultation with the Chairperson whenever possible, shall draw up the provisional agenda for each session.

2. The provisional agenda shall include all items required by these rules as well as items proposed by:

(a) The Sub-Commission at the previous session;

(b) The General Assembly;

(c) The Economic and Social Council;

(d) The Commission on Human Rights;

(e) The High Commissioner for Human Rights.

2. bis The provisional agenda may include, when the Secretary-General and the Chairperson fully agree, such items as proposed by:

(a) A working group of the Sub-Commission;

(b) The Chairperson;

(c) A member of the Sub-Commission;

(d) The Secretary-General;

(e) A specialized agency, subject to rule 72;

(f) A non-governmental organization, subject to paragraph 4 of this rule.

3. Items proposed for inclusion in the provisional agenda pursuant to paragraph 2 bis shall be submitted with basic documents in sufficient time to reach the Secretary-General not less than seven weeks before the opening of each session.

4. (a) Non-governmental organizations having general consultative status may propose items for the provisional agenda provided that:

(i) An organization that intends to propose such an item shall inform the Secretary-General of such intention at least nine weeks before the opening of the session, and before formally proposing item(s) shall give due consideration to any comments the Secretary-General may make;

(ii) The proposal shall be formally submitted with basic documents not less than seven weeks before the commencement of the session;

(b) An item proposed in accordance with the provisions of this paragraph shall be included in the agenda of the Sub-Commission if it is adopted by a two-thirds majority of the members present and voting.

Rule 6 (Communication of provisional agenda)

1. The Secretary-General shall communicate to all members of the Sub-Commission the annotated provisional agenda, not less than six weeks before the opening of the session.

2. In exceptional circumstances, the Secretary-General may, for reasons to be specified in writing, transmit the basic documentation relating to items of the provisional agenda not less than four weeks before the opening of the session.

Rule 7 (Adoption of the agenda)

The Sub-Commission shall at the beginning of each session, after the election of its officers, in accordance with rule 15, adopt the agenda for that session on the basis of the provisional agenda referred to in rule 5.

Rule 8 (Revision of the agenda)

During a session, the Sub-Commission may revise the agenda by adding, deleting, deferring or amending items. Only important and urgent items shall be added to the agenda during the session.

Rule 9 (Draft provisional agenda for subsequent session)

At each session of the Sub-Commission, the Secretary-General shall submit a draft provisional agenda for the Sub-Commission's subsequent session, indicating in respect of each agenda item the documents to be submitted under that item and the legislative authority for their preparation, in order to enable the Sub-Commission to consider the documents from the point of view of their contribution to the work of the Sub-Commission and of their urgency and relevance in the light of the current situation.

III. REPRESENTATION

Rule 10 (Terms of office of members)

Unless the Council decides otherwise, the term of office of members of the Sub-Commission shall begin when they are elected at the election held biennially by the Commission on Human Rights and shall end when they are not elected at the election held four years later by the Commission.

Practice 2

In the Sub-Commission, the term "members" is used to mean both "experts and their alternates" and "experts or their alternates", as the case may be.

Rule 11 (Representatives)

Not applicable to the Sub-Commission.

Rule 12 (Rights of representatives pending confirmation)

Not applicable to the Sub-Commission.

Rule 13 (Alternates)

1. Each member of the United Nations may designate an "alternate" to act in place of an "expert" to be elected together with the "expert" at the election

provided for in rule 10. When acting as "expert", the "alternate" so designated shall have the same status as an "expert", including the right to vote.

2. Not applicable to the Sub-Commission.

Practice 3

1. Alternates may attend all the meetings of the Sub-Commission, both public and private, together with their respective experts.

2. Alternates may be elected as officers or special rapporteurs only when appropriate experts are not available.

3. Alternates may not replace their respective experts who are acting as the Chairperson or Rapporteur, unless the Sub-Commission decides otherwise.

4. Alternates may not take the seats of their respective experts who are on the podium.

Rule 14 (Advisers)

Not applicable to the Sub-Commission.

Practice 4

Experts may be accompanied by their advisers and/or assistants during the public meetings, if necessary.

IV. OFFICERS

Rule 15 (Election of officers)

At the commencement of the first meeting of a regular session, the Sub-Commission shall elect, from among its members, a Chairperson, three Vice-Chairpersons without priority, and a Rapporteur.

Practice 5

1. The Chairperson will be elected in turns from the five geographical regions in accordance with the following order starting from 1999, unless the Sub-Commission decides otherwise: Asia, Eastern Europe, Western Europe and others, Latin America, Africa.

2. The Rapporteur will be elected from the five geographical regions in accordance with the following order starting from 1999, unless the Sub-Commission decides otherwise: Latin America, Africa, Asia, Western Europe and others, Eastern Europe.

Rule 16 (Term of office)

Rule 16 (Term of office)

1. The officers of the Sub-Commission shall, subject to rule 19, hold office until their successors are elected.

Rule 17 (Acting Chairperson)

1. If the Chairperson finds it necessary to be absent during a meeting or any part thereof, he or she shall designate one of the Vice-Chairpersons to take his or her place.

2. If the Chairperson ceases to hold office pursuant to rule 19, the remaining officers shall designate one of the Vice-Chairpersons to take his or her place until the election of a new Chairperson.

Rule 18 (Powers of the Acting Chairperson)

A Vice-Chairperson acting as Chairperson shall have the powers and duties of the Chairperson.

Rule 19 (Replacement of the Chairperson or other officers)

If the Chairperson or any other officer is unable to carry out his or her functions or ceases to be a member of the Sub-Commission, he or she shall cease to hold such office and a new officer shall be elected for the unexpired term.

Rule 20 (Voting rights of the officers)

The Chairperson shall have the right to vote.

Practice 6

1. The Chairperson of the Sub-Commission may refrain from exercising his or her voting right, unless the Sub-Commission decides otherwise.

2. The Vice-Chairpersons not acting as Chairperson and the Rapporteur may exercise their voting rights.

V. SUBSIDIARY ORGANS

Rule 21 (Establishment of working groups)

1. During a session, the Sub-Commission may set up such working groups composed of members of the Sub-Commission as are deemed necessary and refer to them any questions on the agenda for study and report.

2. With the prior approval of the Council and in agreement with the Secretary-General such working groups may be authorized to sit while the Sub-Commission is not in session.

3. The members of working groups of the Sub-Commission shall be nominated by the Chairperson, at the recommendation of the five geographic regions and subject to the approval of the Sub-Commission.

Rule 22 (Establishment of Sub-Commissions)

Not applicable to the Sub-Commission.

Rule 23 (Officers)

Unless the Sub-Commission decides otherwise, its working groups shall elect their own officers.

Practice 7

1. In principle, the working groups are expected to elect a Chairperson and a Rapporteur.

2. The working groups, however, may elect, at their own discretion, only one person to serve as Chairperson-Rapporteur.

Rule 24 (Rules of procedure)

The rules of procedure of the Sub-Commission shall apply to the proceedings of its working groups insofar as they are applicable.

VI. SECRETARIAT

Rule 25 (Duties of the Secretary-General)

1. The Secretary-General shall act in that capacity in all meetings of the Sub-Commission. He may designate a member of the Secretariat to act as his or her representative.

2. He or she shall provide and direct the staff required by the Sub-Commission and be responsible for all the arrangements that may be necessary for its meetings.

3. He or she shall keep the members of the Sub-Commission informed of any questions that may be brought before it for consideration.

Rule 26 (Duties of the Secretariat)

The Secretariat shall:

(a) Interpret speeches made at meetings;

(b) Receive, translate and circulate documents;

(c) Print, publish and circulate as appropriate the records of the sessions, the resolutions of the Sub-Commission and the required documentation;

(d) Have custody of the documents in the archives; and

(e) Generally perform all other work that may be required.

Rule 27 (Statements by the Secretariat)

The Secretary-General or his or her representative may, subject to rule 44, make oral as well as written statements to the Sub-Commission concerning any question under consideration.

Rule 28 (Estimate of expenditure)

1. Before a proposal involving the expenditure of United Nations funds is approved by the Sub-Commission, the Secretary-General shall prepare and provide to the Sub-Commission an estimate of the programme budget implications of implementing the proposal. The Chairperson shall draw attention to that estimate and invite discussion on it when the proposal is considered by the Sub-Commission.

2. Any programme budget proposal recommended by the Sub-Commission to the Council for its approval, through the Commission on Human Rights, must be stated in terms of the objectives to be achieved.

VII. LANGUAGES

Rule 29 (Official and working languages)

Arabic, Chinese, English, French, Russian and Spanish shall be the official languages, and English, French and Spanish the working languages of the Sub-Commission.

Rule 30 (Interpretation)

1. Speeches made in an official language shall be interpreted into the other official languages.

2. A speaker may speak in a language other than an official language if he or she provides for interpretation into one of the official languages. Interpretation into the other official languages by the interpreters of the Secretariat may be based on the interpretation given in the first such language.

Rule 31 (Languages of records)

Records shall be drawn up in the working languages. A translation of the whole or part of any record into any of the other official languages shall be furnished if requested by a member.

Rule 32 (Languages of resolutions and other formal decisions)

All resolutions, recommendations and other formal decisions of the Sub-Commission shall be made available in the official languages.

VIII. RECORDS AND REPORTS

Rule 33 (Sound recordings of meetings)

Sound recordings of meetings of the Sub-Commission shall be made and kept by the Secretariat. Such recordings may also be made and kept of the meetings of working groups if so decided by the Sub-Commission.

Rule 34 (Summary records of meetings)

No summary records of meetings of the Sub-Commission or its working groups shall be provided, unless these have been specifically authorized by the Council.

Rule 35 (Records of public meetings)

1. Summary records of the public meetings of the Sub-Commission and its working groups, where authorized and required, shall be prepared by the Secretariat. They shall be distributed as soon as possible to all members of the Sub-Commission or of the working groups, and to any other participants in the meeting, who may, within one week of their receipt, submit corrections to the Secretariat; in special circumstances, the presiding officer may, in consultation with the Secretary-General, extend the time for submitting corrections. Any disagreement concerning such corrections shall be decided by the presiding officer of the body to which the record relates, after consulting, where necessary, the sound recordings of the proceedings. Corrections will be consolidated in a single corrigendum to be issued after the end of the session.

2. The summary records and the consolidated corrigendum thereto shall be distributed promptly to the Members of the United Nations and to the specialized agencies. On publication, these records may be consulted by the public.

Rule 36 (Records of private meetings)

The records of private meetings of the Sub-Commission shall be distributed promptly to the members of the Sub-Commission. They shall be made available to other Members of the United Nations upon decision of the Sub-Commission. They may be made public at such time and under such conditions as the Sub-Commission may decide.

Rule 37 (Report to the Commission)

The Sub-Commission shall submit to the Commission on Human Rights a report, which shall normally not exceed 32 pages, on the work of each session containing a concise summary of recommendations and a statement of issues requiring action by the Commission. It shall as far as practicable frame its recommendations and resolutions in the form of drafts for approval by the Commission.

Rule 38 (Communication of formal decisions and reports)

As soon as possible, the text of the formal decisions and reports adopted by the Sub-Commission shall be distributed to all members of the Sub-Commission and to any other participants in the session. The printed text of such decisions and reports shall be distributed as soon as possible after the close of the session to the Members of the United Nations, to the specialized agencies, to the intergovernmental organizations referred to in rule 74 and to the concerned non-governmental organizations having general or special consultative status or on the Roster.

IX. PUBLIC OR PRIVATE MEETINGS

Rule 12 (General principles)

Unless the Sub-Commission decides otherwise its meetings shall be held in public.

Council resolution 1503

The Sub-Commission considers the "1503 procedure" in private meetings in accordance with paragraph 5 of Council resolution 1503 (XLVIII).

Practice 8

The Sub-Commission earmarks at least one private meeting during each session in order to consider the methods of work and other subjects only among its members.

New proposal 1

The Sub-Commission shall hold private meetings, under the agenda item on "human rights situations", immediately after the exhaustion of the list of observer speakers, including those exercising the right of reply, so that the members may be able to exchange their views freely and openly while their memories are still fresh.

X. CONDUCT OF BUSINESS

Rule 40 (Quorum)

A majority of the members of the Sub-Commission shall constitute a quorum.

Guideline No. 11 (Schedule of meetings)

In accordance with an established practice, meetings not devoted to the adoption of resolutions and decisions shall begin at the scheduled time. However, if a member so requests, the meeting may not be called to order until there is a quorum.

Rule 41 (General powers of the Chairperson)

1. In addition to exercising the powers conferred upon him or her elsewhere by these rules, the Chairperson shall declare the opening and closing of each meeting of the Sub-Commission, direct the discussions, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The Chairperson, subject to these rules, shall have complete control of the proceedings of the Sub-Commission and over the maintenance of order at its meetings. He or she shall rule on points of order. He or she may propose to the Sub-Commission the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times each member may speak on an item, the adjournment or closure of the debate, and the suspension or adjournment of a meeting.

2. The Chairperson, in the exercise of his or her functions, remains under the authority of the Sub-Commission.

Rule 42 (Points of order)

1. During the discussion of any matter, a member may at any time raise a point of order, which shall be decided immediately by the Chairperson in accordance with these rules. A member may appeal against the ruling of the Chairperson. The appeal shall be immediately put to the vote, and the ruling of the Chairperson shall stand unless overruled by a majority of the members present and voting.

2. A member may not, in raising a point of order, speak on the substance of the matter under discussion.

New proposal 2

A member may not raise a point of order in such a way as to interrupt the presentation of another member's point of order, unless the member who asked for the point of order first is speaking on the substance of the matter under discussion.

Rule 43 (Speeches)

1. No one may address the Sub-Commission without having previously obtained the permission of the Chairperson. Subject to rules 42, 45 and 48 to 50, the Chairperson shall call upon speakers in the order in which they signify their desire to speak.

Practice 9

Those observers who are not present in the meeting when their names are called by the Chairperson shall lose the right to speak on the agenda item under consideration.

Practice 10

1. Under the agenda item "human rights situations", non-governmental organization (NGO) observers might be requested to speak, in accordance with the Chairperson's instruction, not in the order in which they inscribed their names in the speakers' list, but together with other NGOs wishing to speak on the human rights situations in the same country.

2. Debate shall be confined to the question before the Sub-Commission and the Chairperson may call a speaker to order if his or her remarks are not relevant to the subject under discussion.

3. The Sub-Commission may limit the time allowed to speakers and the number of times each member may speak on any question; permission to speak on a motion to set such limits shall be accorded only to two members favouring and to two opposing such limits, after which the motion shall be put to the vote immediately. Interventions on procedural questions shall not exceed five minutes unless the Sub-Commission decides otherwise. When debate is limited and a speaker exceeds the allotted time, the Chairperson shall call him or her to order without delay.

Guideline No. 14 (Order of statements)

1. Members of the Sub-Commission, at any time;

2. Observers for intergovernmental and non-governmental organizations;

3. Government observers.

Guideline No. 15 (List of speakers)

1. The list of speakers shall be opened at the beginning of the session for all items on the agenda. The closure of the list for each agenda item shall be announced as the work proceeds.

2. If, during a meeting, there are no more speakers on the agenda item, the next item shall be introduced without the discussion on the preceding item being closed.

Guideline No. 16 (Speaking time)

At the beginning of each session, the Chairperson shall invite participants to respect the speaking time allocated for each agenda item in accordance with the following rules, unless the Bureau decides otherwise.

(a) Members of the Sub-Commission:

(i) Twenty minutes maximum, which may be divided into one or several statements;

(ii) Thirty-five minutes maximum, for the presentation of a study or a working paper, to be divided by the author between explanatory remarks and the conclusion.

(b) Government observers:

(i) Ten minutes maximum (and 14 minutes in total if the item contains several sub-items);

(ii) Five minutes maximum in connection with a right of reply or three minutes maximum in connection with a second right of rejoinder, as the case may be;

(iii) Five minutes maximum for a statement to be exercised immediately before voting on a resolution when the country is implicated. A government observer of such implicated country may make a statement immediately after voting instead of before voting. [Chairperson's ruling during the forty-eighth session in 1996];

(c) Non-governmental observers: 10 minutes maximum (and 16 minutes in total if the item contains several sub-items or in the case of a joint statement).

Supplement to guideline No. 16 (1)

1. Speaking time

(a) Maximum speaking time under the agenda item "human rights situations" shall, for all observers, be determined by dividing equally the time allocated to observers by the number of speakers who have signed up before the closure of the list. The closure should be set at 18.00 hours on the day before the opening of debate on that agenda item. Should several observers on the list subsequently agree to make a joint statement, the time of the chosen speaker can be extended. Four meetings shall be allocated for the presentations by the observers referred to above;

(b) The supplementary guideline under (a) also applies to government observers who wish to provide information on human rights developments in their countries, provided they have signed up before the closure of the list mentioned. Under the agenda item "human rights situations", governmental observers shall not address the human rights situations in countries other than their own;

(c) Speaking time for government observers exercising the right of reply is additional to time used by that observer under (b) and shall be a maximum of five minutes, unless the number and content of allegations directed against that Government warrant the allocation of more time, to be decided by the Chairperson at the request of the observer concerned. The right of reply shall normally be exercised after the exhaustion of the list of speakers mentioned under (a), but can, in exceptional circumstances with the permission of the Chairperson, be exercised earlier.

2. Allocation of time and sequences of speakers

The allocation of time under the agenda item "human rights situations" shall be based on the principle that observers on the list mentioned under

point 1 (a) speak first, until the list is exhausted, followed by government observers exercising their right of reply. Members of the Sub-Commission should normally speak at the end, it being understood that government observers can also exercise their right of reply to the statements made by the members of the Sub-Commission.

Practice 11

1. An NGO observer may not speak twice under the same agenda item, even if he/she represents more than one NGO.

2. Once an observer has raised a particular issue on a human rights situation under one agenda item, he or she may not raise the same issue under another agenda item.

Rule 44 (Closing of list of speakers)

During the course of a debate the Chairperson may announce the list of speakers and, with the consent of the Sub-Commission, declare the list closed. When there are no more speakers, the Chairperson shall, with the consent of the Sub-Commission, declare the debate closed. Such closure shall have the same effect as closure by decision of the Sub-Commission. No change.

Guideline No. 15 (List of speakers) <repetition>

1. The closure of the list for each agenda item shall be announced as the work proceeds.

2. If, during a meeting, there are no more speakers on an agenda item, the next item shall be introduced without the discussion on the preceding item being closed.

Supplement to guideline No. 16 (2)

The closure of the list of speakers should be set at 18.00 hours on the day before the opening of the agenda item "human rights situations".

Rule 45 (Right of reply)

The right of reply shall be accorded by the Chairperson to any government observer who requests it. Government observers should attempt, in exercising this right, to be as brief as possible and preferably to deliver their statements at the end of the meeting at which this right is requested.

Supplement to guideline No. 16 (3)

1. Rights of reply shall normally be made after the exhaustion of the list of speakers mentioned under, but can, in exceptional circumstances with the permission of the Chairperson, be made earlier.

2. The allocation of time under the agenda item "human rights situations" shall be based on the principle that observers on the list of speakers speak first, until the list is exhausted, followed by government observers exercising their right of reply. Members of the Sub-Commission should

normally speak at the end, it being understood that government observers can also exercise their right of reply to statements made by members of the Sub-Commission.

Rule 46 (Congratulations)

Congratulations to the newly elected officers shall be expressed only by the outgoing Chairperson or one of the Vice-Chairpersons designated by the outgoing Chairperson.

New proposal 3

Further congratulations should be avoided and/or abbreviated, insofar as possible.

Rule 47 (Condolences)

Condolences shall be expressed solely by the Chairperson on behalf of all members. The Chairperson, with the agreement of the Sub-Commission, may dispatch a message on behalf of all members of the Sub-Commission.

Rule 48 (Suspension or adjournment of the meeting)

During the discussion of any matter, a member may at any time move the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted, and they shall be put to the vote immediately.

Rule 49 (Adjournment of debate)

A member may at any time move the adjournment of the debate on the item under discussion. Permission to speak on the motion shall be accorded only to two members favouring and to two opposing the adjournment, after which the motion shall be put to the vote immediately.

Rule 50 (Closure of debate)

A member may at any time move the closure of the debate on the item under discussion, whether or not any other member has signified his or her wish to speak. Permission to speak on the motion shall be accorded only to two members opposing the closure, after which the motion shall be put to the vote immediately.

Rule 51 (Order of motions)

Subject to rule 42, the motions indicated below shall have precedence in the following order over all proposals or other motions before the meeting:

(a) To suspend the meeting;

(b) To adjourn the meeting;

(c) To adjourn the debate on the item under discussion;

(d) To close the debate on the item under discussion.

Rule 52 (Submission of proposals and substantive amendments)

Proposals and substantive amendments shall normally be submitted in writing to the Secretary-General. Unless the Sub-Commission decides otherwise, proposals and substantive amendments shall be discussed or put to the vote no earlier than 24 hours after copies have been circulated to all members.

Rule 53 (Withdrawal of proposals and motions)

A proposal or a motion may be withdrawn by its sponsor at any time before voting on it has commenced, provided that it has not been amended. A proposal or a motion thus withdrawn may be reintroduced by any member.

Rule 54 (Decisions on competence)

A motion calling for a decision on the competence of the Sub-Commission to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question.

Rule 55 (Reconsideration of proposals)

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Sub-Commission so decides. Permission to speak on a motion to reconsider shall be accorded only to two members opposing the motion, after which it shall be put to the vote immediately.

XI. VOTING AND ELECTIONS

Rule 56 (Voting rights)

Each member of the Sub-Commission shall have one vote.

Rule 57 (Request for a vote)

A proposal or motion before the Sub-Commission for decision shall be voted upon if any member so requests. When no member requests a vote, the Sub-Commission may adopt proposals or motions without a vote.

Rule 58 (Majority required)

1. Except as provided in rule 5 (4) (ii), decisions of the Sub-Commission shall be made by a majority of the members present and voting.

2. For the purpose of these rules, the phrase "members present and voting" means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting.

Rule 59 (Method of voting)

1. Except as provided in rule 66, the Sub-Commission shall normally vote by show of hands, except that a member may request a roll-call which shall be taken in the English alphabetical order of the names of the members of the

Sub-Commission, beginning with the member whose name is drawn by lot by the Chairperson. The name of each member shall be called in all roll-calls, and he or she shall reply "yes", "no" or "abstention".

2. The vote of each member participating in any roll-call shall be inserted in the record.

Decision 1

The Sub-Commission decided to suspend rule 59, pursuant to rule 78, in order to vote by secret ballot on proposals under the agenda item on the 1503 procedure, for the purpose of protecting the independence of the members. [decisions 1989/101, 1990/111]

Decision 2

The Sub-Commission decided, pursuant to Council resolution 1991/32, to vote by secret ballot whenever a vote was requested on proposals pertaining to allegations of violations of human rights in countries, under any agenda item, including proposals of a procedural nature relating to proposals of a substantive nature. [decision 1998/102]

Rule 60 (Explanation of vote)

Members may make brief statements consisting solely of the explanation of their votes, before the voting has commenced or after the voting has been completed. The member sponsoring a proposal or motion shall not speak in explanation of vote thereon, except if it has been amended.

Practice 12

It has been an established practice as well as a logical consequence that members may not speak in explanation of vote, either before or after voting, when the vote is made by secret ballot.

Rule 61 (Conduct during voting)

After the Chairperson has announced the commencement of voting, no member may interrupt the voting except on a point of order in connection with the actual process of voting.

Rule 62 (Division of proposals and amendments)

Parts of a proposal or an amendment shall be voted on separately if a member requests that the proposal be divided. Those parts of the proposal or the amendment which have been approved shall then be put to the vote as a whole; if all the operative parts of a proposal or an amendment have been rejected, the proposal or amendments shall be considered to have been rejected as a whole.

Rule 63 (Amendments)

An amendment is a proposal that does no more than add to, delete from or revise part of another proposal.

Rule 64 (Order of voting on amendments)

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the amendment furthest removed in substance from the original proposal shall be voted on first and then the amendment next furthest removed therefrom and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted on.

Rule 65 (Order of voting on proposals)

1. If two or more proposals, other than amendments, relate to the same question, they shall, unless the Sub-Commission decides otherwise, be voted on in the order in which they were submitted. The Sub-Commission may, after each vote on a proposal, decide whether to vote on the next proposal.

2. A motion requiring that no decision be taken on a proposal shall have priority over that proposal.

Rule 66 (Elections)

All elections shall be held by secret ballot, unless, in the absence of any objection, the Sub-Commission decides to proceed without taking a ballot on an agreed candidate or slate.

Rule 67

1. When one or more elective places are to be filled at one time under the same conditions, those candidates, in a number not exceeding the number of such places, obtaining in the first ballot a majority of the votes cast and the largest number of votes, shall be elected.

2. If the number of candidates obtaining such majority is less than the number of places to be filled, additional ballots shall be held to fill the remaining places.

Rule 68 (Equally divided votes)

If a vote is equally divided on a matter other than an election, the proposal or motion shall be regarded as rejected.

XII. PARTICIPATION OF NON-MEMBERS OF THE SUB-COMMISSION

Rule 69 (Participation of States Members of the United Nations)

1. The Sub-Commission shall invite any Member of the United Nations and any other State to send its representatives to the public meetings of the Sub-Commission as government observers.

2. A working group of the Sub-Commission shall invite any State to send its representatives to the public meetings of the working group as government observers.

3. A State thus invited shall not have the right to vote.

Rule 70 (Participation of national liberation movements)

The Sub-Commission may invite any national liberation movement recognized by or in accordance with resolutions of the General Assembly to send its representative to public meetings of the Sub-Commission as observers without the right to vote.

Rule 71 (Participation of specialized agencies)

In accordance with the agreements concluded between the United Nations and the specialized agencies, the specialized agencies shall be entitled:

(a) To be represented at public meetings of the Sub-Commission and its working groups;

(b) To participate, without the right to vote, through their representatives, in deliberations with respect to items of concern to them.

Rule 72 (Consultation with specialized agencies)

Before the Secretary-General places an item proposed by a specialized agency on the provisional agenda of the Sub-Commission, he or she shall carry out with the agency concerned such preliminary consultation as may be necessary.

Rule 73 (Consultation with specialized agencies (2))

1. Where an item proposed for inclusion in the provisional agenda for a session or added to the agenda under rule 5 contains a proposal for new activities to be undertaken by the United Nations relating to matters that are of direct concern to one or more specialized agencies, the Secretary-General shall enter into consultation with the agencies concerned and report to the Sub-Commission on the means of achieving a coordinated use of the resources of the respective agencies.

2. When in the course of a meeting of the Sub-Commission a proposal for new activities to be undertaken by the United Nations related to matters that are of direct concern to one or more specialized agencies, the Secretary-General

shall, after such consultation as may be possible with the representatives of the agencies concerned, draw the attention of the Sub-Commission to the implications of the proposal.

3. Before deciding on proposals referred to above, the Sub-Commission shall satisfy itself that adequate consultations have taken place with the agencies concerned.

Rule 74 (Participation of other intergovernmental organizations)

Representatives of intergovernmental organizations accorded permanent observer status by the General Assembly and of other intergovernmental organizations designated on a continuing basis by the Council or invited by the Commission may participate, without the right to vote, in the deliberations at the public meetings of the Sub-Commission on questions within the scope of the activities of the organization.

XIII. CONSULTATION WITH AND REPRESENTATION OF NON-GOVERNMENTAL ORGANIZATIONS

Rule 75 (Representation)

Non-governmental organizations having general or special consultative status may designate authorized representatives to sit as observers at public meetings of the Sub-Commission and its working groups. Those on the Roster may have representatives present at such meetings when matters within their field of competence are being discussed.

Rule 76 (Consultation)

1. The Sub-Commission may consult with organizations having general or special consultative status either directly or through a committee or committees established for the purpose. In all cases, such consultations may be arranged on the invitation of the Sub-Commission or at the request of the organization.

2. On the recommendation of the Secretary-General and at the request of the Sub-Commission, organizations on the Roster may also be heard by the Sub-Commission.

XIV. AMENDMENT AND SUSPENSION OF RULES OF PROCEDURE

Rule 77 (Method of amendment)

Only the Council may amend these rules.

Rule 78 (Method of suspension)

A rule of procedure may be temporarily suspended by the Sub-Commission provided that such suspension shall not be inconsistent with any applicable decisions of the Council and provided that 24 hours' notice of the proposal for suspension has been given, which may be waived if no member objects. Any such suspension shall be limited to a specific purpose and to a period required to achieve that purpose.

XV. PREPARATION OF STUDIES

Guideline No. 1 (Regulation of the number of studies)

1. When the number of ongoing studies entrusted to special rapporteurs reaches 13, no new study may be undertaken unless a previously authorized study has been completed, except when it has been requested directly by the Commission.

2. Any study whose final report has been submitted to the Sub-Commission for consideration, even if it is subsequently decided that it may be updated annually, for example, in the form of a periodic report, is considered to have been completed.

3. When the number of studies proposed for a decision exceeds 13, the members of the Sub-Commission should hold consultations in order to establish priorities.

Guideline No. 2 (Document preliminary to the studies)

1. No new study may be undertaken unless a document entitled "preparatory document" has been submitted. Such a document should indicate, inter alia, the relevance of the study, including its timeliness, its object and the general outlines envisaged as well as a draft timetable. It should take the form of a working paper a few pages in length, submitted if possible in the course of the session of the Sub-Commission during which the study is proposed.

2. The preparation of a preparatory document shall in no way prejudge the decision finally taken concerning the execution of the study or the person finally designated to carry it out.

Guideline No. 3 (Duration of studies)

1. Unless there are special circumstances connected with the nature of the subject under study, the period of time for carrying out a study should be three years from the time of its authorization. It should comprise, in addition to the preparatory document, the following three phases: a preliminary report, a progress report and a final report.

2. If at any time during his or her mandate the special rapporteur considers that, as a result of the difficulties encountered by him or her, he or she will need more than three years to complete his or her study, he or she should submit the question to the Sub-Commission for consideration in the context of the open debate on the agenda item in question.

Guideline No. 4 (Appointment of special rapporteurs)

1. The specialized knowledge of the various members of the Sub-Commission should be taken into account when appointing special rapporteurs, due regard being had for equitable geographical distribution. The members of the Sub-Commission should hold consultations during the session to coordinate the topics of new studies and the appointment of the experts who will be responsible for them. To this end, the Rapporteur of the Sub-Commission shall

be entrusted with the task of collecting proposals for studies that are made during the session and informing the Sub-Commission in due time, for the purpose of agreeing and deciding on them.

Guideline No. 5 (Appointment of commentators)

1. The author of the study may appoint a maximum of two members of the Sub-Commission as commentators in order to undertake an in-depth analysis of the study, in liaison with its author, so as to be better able to draw the attention of the Sub-Commission, during its deliberations, to points that seem important or controversial.

2. When such an appointment is envisaged, it is desirable that it should take place at the session preceding the submission of the study or not later than the beginning of the session at which the study is submitted.

3. Such an appointment should in no way limit the right of any member of the Sub-Commission to comment, at any time under the agenda item being discussed, on the report submitted for consideration.

Guideline No. 6 (List of studies)

In accordance with established practice and in compliance with paragraph 3 of Commission resolution 1982/23, the Sub-Commission shall annex to its annual report an updated list of completed or ongoing studies containing the following information bearing appropriate symbol numbers:

(a) Title of the study;

(b) Name of the author;

(c) Legislative authority;

(d) Timetable for the study;

(e) Effective date of presentation of the preliminary, interim (progress) or final report. No change.

Guideline No. 7 (Follow-up of studies)

The secretariat shall inform the Sub-Commission, at each session, of the follow-up action on studies, in the form of a note indicating for each study the following points:

(a) Title of the study, specifying, if necessary, whether or not the report is updated annually (periodic report);

(b) Name of the author;

(c) Reference to the decisions concerning the budgetary implications and an indication of the total amount; for each of these decisions, the total amount of the appropriations actually used after the completion of the appropriate phase of the study;

(d) Summary of the most recent recommendation made by the author of the study; follow-up given to these recommendations, in respect of the rules, measures or practices adopted by the secretariat, by Governments, by the specialized agencies or by the institutions or non-governmental organizations concerned.

XVI. RESOLUTIONS AND DECISIONS

Guideline No. 8 (Number of resolutions and decisions)

In order to permit a better assessment of trends with regard to the number of resolutions and decisions and to promote self-discipline for the purpose of reducing their number, the secretariat shall provide, at each session of the Sub-Commission, a comparative table for the previous three years showing the number of resolutions and decisions considered by category, as follows:

Guideline No. 9 (Self-discipline)

At the beginning of each meeting, the Chairperson shall invite the secretariat to inform the Sub-Commission of the number of resolutions and decisions registered in order to encourage self-discipline in this respect:

(a) Resolutions and decisions concerning the Sub-Commission alone;

(b) Resolutions and decisions submitted to the Commission on Human Rights for action or adoption, stating how many of them are also to be submitted to the Council for adoption;

(c) Resolutions of whatever category concerning the human rights situation in a given country;

(d) Resolutions and decisions concerning the submission of studies;

(e) Resolutions and decisions whose adoption was deferred or which were withdrawn;

(f) Solemn and consensus statements by the Chairperson;

(g) Documents stating the financial implications of resolutions and decisions submitted in compliance with financial regulation 13.1 and rule 28 of the rules of procedure of the functional commissions of the Council.

Guideline No. 9 (Self-discipline)

At the beginning of each meeting, the Chairperson shall invite the secretariat to inform the Sub-Commission of the number of resolutions and decisions registered in order to promote self-discipline in this respect.

Guideline No. 9 (bis) (Consultation)

If the total number of intended resolutions and/or decisions is found to exceed the desirable number, the Chairperson will consult with those members who intend to submit more than one resolution and/or decision so that a balance may be maintained among the members.

Guideline No. 10 (Co-sponsors)

If, when a draft resolution or decision is being submitted, the Chairperson notes that the signatures of at least four co-sponsors have not been obtained, he or she may, in consultation with the officers, invite the author or, if appropriate, the co-sponsors, to withdraw their draft. If the author or a single co-sponsor objects, the draft shall be kept on the agenda.

Guideline No. 11 (Consultations by the Chairperson)

Either during consultations prior to the submission of a draft resolution or decision or after its registration with the secretariat, the Chairperson, after consultation with the officers, shall ascertain whether it would be appropriate to invite all the parties involved in such consultations to replace the draft resolution or decision with a solemn and consensus declaration by the Chairperson meeting their approval and which would appear in extenso in the report of the Sub-Commission and in the summary record.

Guideline No. 12 (Deadline for submission of draft resolutions or decisions)

Without prejudice to the provisions of rule 52 of the rules of procedure of the functional commissions of the Council, draft resolutions and decisions should be submitted at least three working days before the date of which they are scheduled to be put to a vote. This deadline should be set at four days in cases involving financial implications.

XVII. AGENDA ITEM ON HUMAN RIGHTS SITUATIONS

Supplement to guideline No. 16

1. Speaking time

(a) As a guideline supplemental to guideline No. 16, maximum speaking time under the agenda item "human rights situations" shall, for all observers, be determined by dividing equally the time allocated to observers by the number of speakers who have signed up before the closure of the list. The closure should be set at 18.00 hours on the day before the opening of the agenda item "human rights situations". Should several observers on the list subsequently agree to make a joint statement, the time of the chosen speaker can be extended. Four meetings shall be allocated for the presentations by the observers referred to above;

(b) The rule under (a) also applies to government observers who wish to provide information on human rights developments in their country, provided they have signed up before the closure of the list mentioned. Government observers should normally avoid, under the agenda item "human rights situations", the human rights situations in countries other than their own;

(c) Speaking time for government observers exercising the right of reply is additional to time used by that observer under (b) and shall be a maximum of five minutes, unless the number and content of allegations directed against that Government warrant the allocation of more time, to be decided by the Chairperson at the request of the observer concerned. The right of reply

shall normally be exercised after the exhaustion of the list of speakers mentioned under (a), but can, in exceptional circumstances with the permission of the Chairperson, be exercised earlier.

2. Allocation of time and sequences of speakers

The allocation of time under the agenda item "human rights situations" shall be based on the principle that observers on the list mentioned under point 1 (a) speak first, until the list is exhausted, followed by government observers exercising their right of reply. Members of the Sub-Commission should normally speak at the end, it being understood that government observers can also exercise their right of reply to the statements made by the members of the Sub-Commission.

Note by the Chairman

When examining a situation which appears to reveal a pattern of gross and consistent violations of human rights in a country of which an expert of the Sub-Commission is a national, it would be desirable that the expert concerned not participate in the debates. The ultimate decision on whether or not such expert will intervene in the public discussion remains the responsibility of the expert concerned. [E/CN.4/Sub.2/1998/38, para. 28]

Decision 3

The Sub-Commission decided that it would continue the practice of considering the agenda item on "human rights situations" two days after the adoption of the agenda.

XVIII. AGENDA ITEM ON 1503 PROCEDURE

Council decision 1

The Council decided that consideration of the procedure provided for in its resolution 1503 (XLVIII) shall be made in private meetings.

Decision 1

The Sub-Commission decided to suspend rule 59, pursuant to rule 78, in order to vote by secret ballot on proposals under the agenda item on the 1503 procedure, for the purpose of protecting the independence of the members. [decisions 1989/101, 1990/111]

Decision 4

The Sub-Commission decided to concur with the view expressed by the Working Group on Communications that the procedure governed by Council resolution 1503 (XLVIII) could not be applied as a reparation or relief mechanism in respect of claims of compensation for human suffering or other losses which occurred during the Second World War. [decision 1991/104]

New rules proposed by some members and supported by many members of the Sub-Commission, but not yet formally approved as decisions

New rule 1 (Registration of preference of working language)

The members of the Sub-Commission shall register with the secretariat in which working language they may wish to receive studies, working papers and any other documents.

New rule 2 (Time limit for the submission of documents)

1. Special rapporteurs and other members who were entrusted with the task of preparing studies, working papers and any other documents for submission to the Sub-Commission shall submit them to the secretariat at the latest 10 weeks prior to the session.

2. Studies, working papers and any other documents not submitted by the above time limit may not be considered at the next session unless the Sub-Commission decides otherwise.

New rule 3 (Immediate circulation of documents in working languages)

1. As soon as studies, working papers and any other documents become ready for circulation in any one of the working languages, the secretariat shall send them immediately to the members of the Sub-Commission in accordance with their preference of languages registered with the secretariat, without waiting for the translation into the other two working languages.

2. The secretariat shall send to the members of the Sub-Commission the following documents at the latest four weeks prior to the session:

(a) The annotated agenda and other documents related to the session;

(b) Studies, working papers and any other documents submitted to the secretariat at the latest 10 weeks prior to the session.

New rule 4 (Geographical distribution of chairpersons of working groups)

In electing its Chairperson-Rapporteur, each working group shall pay due consideration to the geographical distribution, taking account of the nationalities of the Chairpersons-Rapporteurs already elected in other working groups.

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Item 1 (c) of the provisional agenda

ORGANIZATION OF WORK

METHODS OF WORK OF THE SUB-COMMISSION

Note by the Secretariat

1. In its resolution 1997/22, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", the Commission on Human Rights requested the Sub-Commission to refrain henceforth from duplicating action by the Commission on Human Rights with regard to country situations under consideration in the public procedures of the Commission and, furthermore, limit action to exceptional cases in which new and particularly grave circumstances arise.

2. At its forty-ninth session, the Sub-Commission, in its decision 1997/113, decided not to adopt resolutions or decisions henceforth under its agenda item entitled "Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII)" in respect of human rights situations which the Commission on Human Rights was considering under the public procedures for dealing with human rights violations.

GE.99-13526 (E)

3. In order to assist the Sub-Commission, the secretariat has prepared (annex I) a list of the human rights situations currently under consideration by the Commission under public procedures for dealing with human rights violations.

4. For the information of the Sub-Commission, the secretariat has also prepared (annex II) a list of country situations currently being considered by the Commission under the agenda items entitled "Organization of the work of the session", "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation" and "Advisory services and technical cooperation in the field of human rights".

Annex I

HUMAN RIGHTS SITUATIONS BEING CONSIDERED BY THE COMMISSION ON HUMAN RIGHTS UNDER PUBLIC PROCEDURES FOR DEALING WITH HUMAN RIGHTS VIOLATIONS

	Commission on Human Rights resolution or decision
Afghanistan	Resolution 1999/9
Bosnia and Herzegovina, Republic of Croatia and the Federal Republic of Yugoslavia	Resolution 1999/18
Burundi	Resolution 1999/10
Cuba	Resolution 1999/8
Cyprus	Decision 1999/103
Democratic Republic of the Congo	Resolution 1999/56
East Timor	Chairman's statement of 23 April 1999
Equatorial Guinea	Resolution 1999/19
Israel (under procedures relating to the occupied Arab territories, including Palestine, the occupied Syrian Golan, southern Lebanon and West Bekaa)	Resolutions 1999/5, 1999/6, 1999/7 and 1999/12
Islamic Republic of Iran	Resolution 1999/13
Iraq	Resolution 1999/14
Kosovo	Resolution 1999/2
Myanmar	Resolution 1999/17
Rwanda	Resolution 1999/20
Sierra Leone	Resolution 1999/1
Sudan	Resolution 1999/15

Annex II

COUNTRY SITUATIONS BEING CONSIDERED BY THE COMMISSION UNDER THE AGENDA ITEMS ENTITLED "ORGANIZATION OF THE WORK OF THE SESSION", "THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION" AND "ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS"

Agenda item: "Organization of the work of the session"

Colombia	Chairman's statement of 27 April 1999

Agenda item: "The right to self-determination and its application to peoples under colonial or alien domination or foreign occupation"

Occupied Palestine	Resolution 1999/55
Western Sahara	Resolution 1999/4

Agenda item: "Advisory services and technical cooperation in the field of human rights"

Cambodia	Resolution 1999/76
Chad	Decision 1999/102
Haiti	Resolution 1999/77
Somalia	Resolution 1999/75

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Fifty-first session
Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Violations of the rights of human rights defenders in all countries

Note by the secretariat

1. In paragraph 5 of its resolution 1998/3 the Sub-Commission requested the High Commissioner to inquire about the security situation of persons listed in the annex to the resolution and to inform the Sub-Commission, at its fifty-first session, of the results of her inquiries. The following information has been provided to the Office of the High Commissioner for Human Rights (OHCHR).

Mr. Akin Birdal, President of the Turkish Human Rights Association and Vice-President of the International Federation of Human Rights Leagues

2. Mr. Birdal started serving a one-year prison sentence at Ankara Central Prison on 3 June 1999. On 27 October 1998, the General Board of Criminal Departments of the Court of Appeals had confirmed an earlier sentence issued by the State Security Court in Ankara, which found Mr. Birdal guilty of violating article 312 of the Turkish Penal Code, prohibiting any incitation to hatred and discrimination based on race, religion or ethnic origin.

3. On 4 December 1998, the High Commissioner for Human Rights wrote to the President of Turkey expressing her concern over Mr. Birdal's conviction and urging the Turkish authorities to review the matter and to ensure respect for Mr. Birdal's right to promote and protect universally recognized human rights and fundamental freedoms.

4. On 5 January 1999, the Special Rapporteur on Freedom of Expression and Opinion addressed an appeal to the Government of Turkey to respect Mr. Birdal's right to peaceful expression of his opinions. On 16 June 1999, the Working Group on Arbitrary Detention addressed another appeal to the Turkish authorities, urging them to take the necessary measures to guarantee the right of Mr. Birdal not to be deprived arbitrarily of his liberty.

Mr. Khemais Ksila, Vice-President of the Tunisian League of Human Rights

5. Mr. Ksila was arrested on 29 September 1997 and charged with disturbing public order, disseminating false information and inciting Tunisian citizens to violate the law. On 11 February 1998, Mr. Ksila was found guilty of these charges and sentenced to three years' imprisonment and payment of a 1,200 dinar fine for disturbing public order. Mr. Ksila's appeals against this sentence did not produce any results. He is currently serving his prison sentence.

6. In May 1999, the Working Group on Arbitrary Detention examined Mr. Ksila's case and concluded that he had been subjected to arbitrary detention. The Working Group argued that the justifications for Mr. Ksila's convictions by the Tunisian courts could not be upheld in the light of article 19 of the Universal Declaration of Human Rights and of article 19 of the International Covenant on Civil and Political Rights.

7. On 20 April 1999, the High Commissioner for Human Rights wrote to the Foreign Minister of Tunisia. In its reply of 15 June 1999 to the High Commissioner's letter, the Government of Tunisia noted that the prosecution and conviction of Mr. Ksila were unrelated to his activities as Vice-President of the Tunisian League of Human Rights; that the judicial proceedings against Mr. Ksila had been conducted in accordance with the provisions of the Tunisian Code of Criminal Procedure and relevant international standards; that he was serving his sentence under normal conditions; and that he had not availed himself of his right to address a written request for clemency to the authorities.

Mr. Ramón Custodio, President of the non-governmental organization Committee for the Defence of Human Rights (CODEH)

8. By note of 25 June 1999, the Ministry of Foreign Affairs of Honduras informed the Office of the High Commissioner for Human Rights that it was not aware of any recent threats to or security problems confronted by Mr. Ramón Custodio. Mr. Custodio was subsequently able to confirm that he has not experienced any personal security problems.

Father Javier Giraldo, Executive Director of the Intercongregational Commission of Justice and Peace of Colombia

9. Father Giraldo, a Jesuit priest, left Colombia in December 1998 and currently lives abroad. His involvement in the "Nunca más" project, the aim of which is to document human rights abuses committed in Colombia over the past 20 years, reportedly led to threats to Father Giraldo's life. Because of his precarious situation, the religious authorities are said to have instructed him to leave the country.

Mr. Clement Nwankwo, Director of the Constitutional Rights Project of Nigeria

10. Mr. Nwankwo is running the above-mentioned project. He was last detained five years ago.

Mr. Destan Rukichi, lawyer and member of the Council for the Defense of Human Rights and Freedoms in Pristina, Kosovo, Federal Republic of Yugoslavia

11. Mr. Rukichi's parents report that he is safe in Pristina. They report that he was prevented from crossing the border from Kosovo into Macedonia on 5 April 1999 by Serbian police.

Mr. Viktor Kaisiepo, human rights activist and spokesperson of the West Papua Peoples' Front of Indonesia

12. According to unconfirmed reports, Mr. Kaisiepo has left Indonesia either for the Netherlands or for Australia because of concerns for his safety. No other information is available.

Mr. Pierre Samba, President of the human rights non-governmental organization Grande Vision in the Democratic Republic of the Congo

13. Mr. Samba has been granted political asylum in Belgium. After several months of hiding, he left the Democratic Republic of Congo in December 1997, because of concerns for his safety connected with his involvement in collecting information on alleged massacres of Hutu refugees in 1996 and 1997 in the eastern part of Zaire for the United Nations Secretary-General's Investigative Team.

14. As the request of the Sub-Commission concerning members of the Judicial Center of Public Interest of the Philippines did not identify individual members allegedly under threat, OHCHR was not in a position to obtain reliable information about the aforementioned lawyers.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Violations of the rights of human rights defenders in all countries

Note by the secretariat

Addendum

1. Following the circulation of document E/CN.4/Sub.2/1999/4, the Office of the High Commissioner for Human Rights received a note verbale dated 29 July 1999 from the Permanent Mission of Turkey to the United Nations Office at Geneva concerning the case of Mr. Akin Birdal. Since the information pertaining to this case, which had been submitted by the Government of Turkey on several occasions earlier, was not included in that document, the Permanent Mission of Turkey requested the Office of the High Commissioner to transmit the views of the Turkish Government to the Sub-Commission in an addendum to document E/CN.4/Sub.2/1999/4.

2. Pursuant to this request, the information received from the Permanent Mission of Turkey is reproduced in the annex.*

* Reproduced as received, in English only.

Annex

Note on Mr. Akin Birdal

1. A public complaint was lodged against Mr. Akin Birdal on 27 September 1996 at the State Security Court of Ankara, for his speech delivered at the meeting on "Peace and Freedom" in Ankara, on 1 September 1996.

2. The State Security Court of Ankara sentenced Mr. Akin Birdal to one year term imprisonment and a fine of 420.000 Turkish Liras (approximately 1.5 US Dollars) on 21 October 1997, in accordance with article 312/2 of the Turkish Penal Code, on the ground of inciting the public to hatred and discrimination based on race, religion or ethnic origin, without prejudice to his right to appeal.

3. This sentence against Mr. Akin Birdal was appealed, and the 8th Criminal Department of the Court of Appeals annulled it on 11 February 1998.

4. In accordance with the "annulment decision" of the Court of Appeals, the case of Mr. Birdal was reconsidered and the State Security Court of Ankara decided to maintain the validity of its previous sentence, on 28 July 1998.

5. The second sentence of the State Security Court of Ankara was also appealed by the attorney of Mr. Birdal. However the General Board of the Criminal Department of the Court of Appeals, in its second examination of the case, confirmed the sentence of the court of first instance in October 1998.

6. Upon the application of his attorney, the execution of the sentence of Mr. Birdal has been postponed for a period of 3 months, and consequently for another month. According to the criminal procedure, the period of postponement of the execution of any sentence is limited to four months. Therefore, Mr. Birdal has been serving his sentence since 3 June 1999 in the prison of Ankara.

7. Mr. Akin Birdal is in good health. However, due to the assassination attempt directed against him last year, he has problems in his right arm, which requires him to receive physiotherapy and electrotherapy. A medical report prepared by 10 medical doctors at the Numune Hospital in Ankara, after examination of Akin Birdal's health, establishes that "his illness does not pose any fatal obstruction to his serving his sentence, if he is kept in a prison furnished with medical equipment". Nevertheless, it has been established by the decision of the Ministry of Justice that he can receive such treatment during his imprisonment. Currently, he receives physiotherapy treatment by a physiotherapist daily.

8. The prosecution and conviction of Mr. Akin Birdal was in accordance with the provisions of the Turkish Code of Criminal Procedure and other related legislation and can in no way be linked to his position as the chairman of the Turkish Human Rights Association.

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Violations of the rights of human rights defenders in all countries

Note by the secretariat

Addendum

Information received from the Permanent Mission of Indonesia concerning the case of Mr. Victor Kasiepo has been reproduced in the annex to document E/CN.4/Sub.2/1999/42.

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of Minorities
Fifty-first session
Item 3 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

Note by the secretariat

1. In its resolution 1998/5 of 20 August 1998, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to appoint Mr. Marc Bossuyt as Special Rapporteur with the task of preparing a study on the concept and practice of affirmative action, and requested him to submit a preliminary report to the Sub-Commission at its fifty-first session. The Commission on Human Rights, in its decision 1999/107 of 27 April 1999, endorsed the decision of the Sub-Commission.

2. In its resolution, the Sub-Commission agreed that the United Nations High Commissioner for Human Rights should be requested to send out a questionnaire to Governments, international organizations and non-governmental organizations, inviting them to send all relevant national documentation on the subject of affirmative action.

3. In view of the fact that the collection of the information referred to above was not possible in the time available for the preparation of documents for the fifty-first session, and as suggested by the Special Rapporteur, the report on the concept and practice of affirmative action will be submitted to the Sub-Commission at its fifty-second session.

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Fifty-first session
Item 3 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

Note by the secretariat

1. In its resolution 1998/6, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to request Mr. Paulo Sergio Pinheiro to prepare, without financial implications, a paper on proposals for the work of the World Conference against Racism, Racial Discrimination and Related Intolerance to be considered by the Sub-Commission at its fifty-first session.

2. Due to circumstances beyond his control, Mr. Pinheiro will not be in a position to present the paper to the Sub-Commission but will make an oral presentation on the subject instead.

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Item 3 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

The rights of non-citizens

Working paper submitted by Mr. David Weissbrodt 1/
in accordance with Sub-Commission decision 1998/103

GE.99-13562 (E)

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Introduction

1. At its fiftieth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in resolution 1998/103, decided "to entrust Mr. David Weissbrodt with the preparation, without financial implications, of a working paper on the rights of persons who are not citizens of the country in which they live, ... in order to enable it to take a decision at its fifty-first session on the feasibility of a study on that subject." The present working paper was prepared to comply with that mandate, assist the Sub-Commission in considering whether a full study of the topic should be undertaken, and respond to a request from the Committee on the Elimination of Racial Discrimination.

2. This working paper first reviews the background to the Sub-Commission's decision to pursue the topic of the rights of persons who are not citizens of the country in which they live, that is, non-citizens. Second, the working paper examines the rights of non-citizens under the International Convention on the Elimination of All Forms of Racial Discrimination. Third, it considers other standards relevant to non-citizens: the Charter of the United Nations; the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the 1985 Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live.

3. Fourth, the working paper looks at the development of the rights of non-citizens since 1985 including global developments, particularly in the context of the United Nations; regional developments, particularly in Europe; and other issues not covered by the 1985 Declaration. The global developments discussed are: the Human Rights Committee's general comment 15 on the position of aliens under the Covenant (1986); the concluding observations and comments of the Committee on the Elimination of Racial Discrimination (CERD); the Convention on the Rights of the Child (1989); the International Convention on the Rights of All Migrant Workers and Members of Their Families (hereafter "Migrant Workers Convention") (1990); general recommendation 21 of the Committee on the Elimination of Discrimination against Women (1992); the International Law Commission's Draft Articles on the Nationality of Natural Persons in Relation to the Succession of States (1997); and the Rome Statute of the International Criminal Court (1998). The regional developments

occurred principally in Europe: the European Convention on Human Rights and its jurisprudence, the European Charter for Regional or Minority Languages (1992), the European Convention on Nationality (1997), and the European Convention on the Participation of Foreigners in Public Life at Local Level (1992). The paper then focuses on four issues not adequately covered by the 1985 Declaration: distinctions among non-citizens, Gypsies/Roma, trafficking in women and children, and the right to leave and return. Lastly, the working paper presents its tentative conclusions and recommendations.

I. ORIGINS OF THE SUB-COMMISSION'S DECISION ON THE RIGHTS OF NON-CITIZENS

4. The Commission on Human Rights, in its resolutions 1996/25, 1997/22, and 1998/28, called upon the Sub-Commission and its members to "further enhance cooperation with mechanisms of the Commission and, within their competence, with all relevant bodies, including human rights treaty bodies."

5. In paragraph 53 of the report of the seventh meeting of persons chairing the human rights treaty bodies (A/51/482, annex), the chairpersons recommended that "the treaty bodies take a more active role in supporting, suggesting topics for, and cooperating in the preparation of studies by the Sub-Commission".

6. CERD discussed this issue during its fiftieth session (see CERD/C/SR.1189) and decided to propose to the Sub-Commission nine topics for the preparation of studies, including the "[r]ights of non-citizens". Mr. Michael Banton, Chairman of CERD, in a letter dated 19 March 1997 (E/CN.4/Sub.2/1997/31, annex), communicated these proposals to the Chairman of the forty-eighth session of the Sub-Commission and requested that he present these proposals to the Sub-Commission during its forty-ninth session.

7. CERD has observed that:

> "In an increasing manner distinctions are being made between different categories of non-citizens (for instance in the law of the European Union). These distinctions may amount to total exclusion of persons, depriving them of the most fundamental rights and having racist implications. This raises questions from the perspective of the International Convention on the Elimination of All Forms of Racial Discrimination, in spite of article 1.2 of the Convention" (ibid.).

8. At its forty-ninth session, the Sub-Commission, in resolution 1997/5, expressed its gratitude to CERD for recommending future Sub-Commission studies

that could usefully contribute to the work of the Committee. Furthermore, the Sub-Commission, in its decision 1997/112, decided to devote special attention to subjects proposed by United Nations treaty-monitoring bodies in proposing new studies. The Sub-Commission has also responded to the request of CERD by deciding to entrust one of its members with a study on affirmative action and another with a working paper on reservations to human rights treaties, both topics suggested by CERD.

9. In discussing the present working paper, members of the Sub-Commission suggested several related issues which might be considered as part of the topic. Accordingly, the Sub-Commission, in its decision 1998/103, asked that the working paper

> "take into account ... developments since the adoption in 1985 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, overcoming impediments to ratification of the International Convention on the Rights of All Migrant Workers and Members of Their Families, discrimination between different groups of non-citizens, [and] the implications of dual citizenship ...".

10. After considering the issues initially proposed by CERD as relating to the rights of non-citizens, the present working paper will also consider those additional issues.

II. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

11. The International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination in article 1, paragraph 1, which states:

> "... the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

12. The general definition of discrimination found in article 1, paragraph 1, is, however, qualified by article 1, paragraph 2, which states:

> "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."

13. Furthermore, the Convention does not affect how States bestow citizenship. Article 1, paragraph 2, is further defined in article 1, paragraph 3, which states:

> "Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality."

14. The Convention does not, however, pre-empt the rights of non-citizens enumerated in other international instruments. In its general recommendation XI (42) on non-citizens, CERD stated that article 1, paragraph 2

> "must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights."

15. In its concluding observations and comments on several States parties' reports CERD has reflected its continuing concern about various forms of discrimination against non-citizens. Those country conclusions and recommendations are discussed below in section IV A.2.

III. OTHER RELEVANT HUMAN RIGHTS STANDARDS RELATING TO NON-CITIZENS

A. Charter of the United Nations

16. The rights of non-citizens are protected in a number of international instruments that embody the principles of equality and non-discrimination. The Charter, for example, contains a non-discrimination clause in Article 1 (3), which states that one purpose of the United Nations is to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

B. Universal Declaration of Human Rights

17. The Universal Declaration of Human Rights states in article 2, paragraph 1, that:

> "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

18. In addition, it should be noted that this provision applies to "everyone" and thus protects all persons, including non-citizens, from racial discrimination and other forms of discrimination. The use of the words "such as" indicate that this is not an exhaustive list, and makes clear that the operative phrase is: "without distinction of *any kind*" (emphasis added). As Professor Richard Lillich has noted, although this list omits nationality, "this omission is not fatal ... because the list clearly is intended to be illustrative and not comprehensive." 2/ Professor Lillich also noted that "nationality would appear to fall into the category of 'distinction of any kind'." 3/

19. The Universal Declaration of Human Rights also provides in article 15 that "[e]veryone has the right to a nationality" and that "[n]o one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality."

C. International Covenant on Civil and Political Rights

20. The provisions enumerated in the International Covenant on Civil and Political Rights (ICCPR) apply generally to non-citizens. Article 2, paragraph 1, of the Covenant states:

> "Each State Party to the present Covenant undertakes to respect and to ensure to *all individuals within its territory and subject to its jurisdiction* the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (emphasis added).

21. The rights of aliens are also set forth in general comment 15 adopted by the Human Rights Committee in 1986 as an authoritative interpretation of the relevant provisions of the Covenant. The Committee reiterated that "the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens." Non-citizens "receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof." The Committee, however, noted a few exceptions: the political rights recognized in article 25 are expressly applicable only to citizens, while article 13 applies only to aliens, who are subject to expulsion. A more detailed discussion of general comment 15 is given in section IV.A.1 below.

22. Article 25 of the ICCPR states:

"Every citizen shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

"(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country."

While article 13 states:

"An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or person or persons especially designated by the competent authority."

D. International Covenant on Economic, Social and Cultural Rights

23. The International Covenant on Economic, Social and Cultural Rights (ICESCR) 4/ establishes rights that apply to everyone, regardless of citizenship. 5/ Article 6 grants everyone the right to work. Article 7 grants everyone just and favourable working conditions. Article 8 ensures everyone the right to establish trade unions. Article 9 guarantees the right to social security for everyone. Article 11 ensures the right of everyone to an adequate standard of living including adequate food, clothing and housing, and to the continuous improvement of living conditions. Article 12 grants the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Article 13 requires States Parties to recognize the right of everyone to education, and article 15 grants everyone the right to take part in cultural life.

24. The ICESCR also can be construed to forbid discrimination on the basis of nationality. Article 2, paragraph 2, states:

"The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 2, paragraph 3, however, creates a specific exception to this rule only for developing countries: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." That provision does not apparently permit discrimination between nationals of different countries, only between nationals of the State party and non-nationals.

E. Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live

25. On 13 December 1985 the General Assembly adopted, by consensus, resolution 40/144 containing the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live. The Declaration was the result of a Sub-Commission study, completed in 1976, on the rights of non-citizens 6/ and covers all individuals who are not nationals of the State in which they are present. The Declaration provides for the respect of fundamental human rights of aliens, including the right to life; the right to privacy; equality before the courts and tribunals; freedom of opinion and religion; and retention of language, culture, and tradition (art. 5). In addition, the Declaration prohibits individual or collective expulsion on discriminatory grounds (art. 7) and provides for trade union rights, the right to safe and healthy working conditions and the right to medical care, social security, and education (art. 8) The provisions of the Declaration are reflected in the Human Rights Committee's general comment 15 (see sect. IV.A.1 below).

26. Individuals who are not nationals of the country in which they live can generally be divided into several categories: migrant workers, refugees, documented and undocumented aliens, and individuals who have lost their nationality. All individuals in all categories are protected under the Declaration. 7/ Article 1 defines the term "alien" as "any individual who is not a national of the State in which he or she is present" (emphasis added).

Article 5, paragraph 1, grants "aliens" specific rights, without specifying any particular subgroup of aliens. Articles 9 and 10 refer to "no alien" and "any alien", respectively.

27. It should be noted that article 5 (1) (e) may allow States to distinguish between classes of aliens by restricting aliens' freedom of thought, opinion, conscience and religion, subject "only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others". Hence, if a State were to determine that distinguishing between documented and undocumented aliens is necessary to protect public safety, such a distinction would not be forbidden by the Declaration.

IV. DEVELOPMENTS SINCE THE ADOPTION OF THE DECLARATION ON THE HUMAN RIGHTS OF INDIVIDUALS WHO ARE NOT NATIONALS OF THE COUNTRY IN WHICH THEY LIVE

28. There have been significant developments since the ground-breaking study by the Baroness Elles for the Sub-Commission in 1977 and the resulting Declaration of 1985, including the developing jurisprudence of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. In addition, the Baroness Elles' did not focus on the precise problems faced by CERD, for example, in the context of the restrictive language in the International Convention on the Elimination of All Forms of Racial Discrimination, such as the difficulties arising from distinctions among non-citizens.

A. Global developments since 1985

1. General comment 15 of the Human Rights Committee

29. After the 1985 Declaration was adopted, one of the first developments regarding the rights of non-citizens was the adoption by the Human Rights Committee at its twenty-seventh session in 1986 of general comment 15 on the position of aliens under the ICCPR. The Committee determined that it would be helpful to state the position of aliens under the Covenant because it found that States Parties had "often failed to take into account that each State Party must ensure the rights in the Covenant to 'all individuals within its territory and subject to its jurisdiction'" (para. 1).

30. As noted above, general comment 15 states that "in general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness" (para. 1).

Paragraph 2 clarifies the general rule that "each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens", the only exceptions being those expressly articulated in article 25 (right to participate in government), which applies only to citizens, and article 13 (expulsion), which applies only to aliens.

31. The Committee noted that "[a] few constitutions provide for equality of aliens with citizens"; however, general comment 15 reflects the Committee's concern that "[i]n certain cases ... there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens" (para. 3).

32. The Committee stressed that "[t]he Covenant gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States Parties in their legislation and in practice as appropriate". Furthermore, the Committee placed on States the responsibility to "ensure that the provisions of the Covenant and the rights under it are made known to aliens within their jurisdiction" (para. 4).

33. In paragraph 7, the Committee expressly reiterated the fundamental rights of aliens protected by the Covenant and that "[t]here shall be no discrimination between aliens and citizens in the application of [those] rights". The full text of the paragraph states:

> "Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may

not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant."

34. General comment 15 clarifies an alien's right to freedom of movement within a territory, and the right to leave that territory "may only be restricted in accordance with article 12, paragraph 3" of the Covenant (para. 8). 8/

35. General comment 15 also addresses the expulsion of aliens: According to paragraph 9, "[a]n alien who is expelled must be allowed to leave for any country that agrees to take him". Paragraph 10, while noting that the Covenant regulates only the procedure and not the substantive grounds for expulsion, stresses the right of appeal and review: "[a]n alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one". The right to appeal may only be abrogated when "'compelling reasons of national security' so require".

2. Concluding observations and comments of the Committee on the Elimination of Racial Discrimination

36. CERD has made concluding observations and comments on the rights of non-citizens with regard to seven countries, reflecting its mandate under the Convention to address discrimination against non-citizens.

37. For example, in examining the report of Croatia (CERD/C/249) at its forty-second session in 1993, CERD "noted with concern the general lack of

clarity in a number of basic legal provisions guaranteeing non-discrimination in the enjoyment of human rights and fundamental freedoms for members of the minority communities", noting that "[i]n some cases, guarantees would appear to apply only to citizens of Croatia" (A/48/18, para. 496). The Committee expressly noted that article 14 of the Croatian Constitution prohibiting racial discrimination and article 35 guaranteeing fundamental freedoms appeared to apply only to Croatian citizens (ibid., para. 481).

38. In examining the report of the Republic of Korea (CERD/C/221/Add.1) at its forty-third session in 1993, CERD "sought clarification on matters relating to naturalization and the rights to inheritance of naturalized citizens; foreigners' eligibility to join or create trade unions and enjoy the benefit of their protection; the level of wages received by foreign workers; and foreign workers' enjoyment of the rights to medical and other social services" (ibid., para. 209). The government representative informed CERD that "naturalized citizens benefited from the same rights and had the same obligations as other citizens" and that "foreign workers had the same rights as workers who were nationals of the country, provided that they were legally registered for work" (ibid., para. 218). In its concluding observations on the report, however, the Committee expressed its concern "at the reported discrimination suffered by spouses and children of foreign workers" (ibid., para. 229).

39. During its examination at the same session of the report of Kuwait (CERD/C/226/Add.5), CERD, recalling that "States Parties were under an obligation to report fully on legislative measures relating to foreigners and their implementation" (ibid., para. 362), asked for more precise information on the current situation of certain categories of persons, and in particular Bedoons and Palestinians, who were reported to be in a very vulnerable position. According to reports from various sources, Bedoons, Palestinians, Iraqis and citizens of other countries that had not participated in the coalition against Iraq had been dismissed from public employment, excluded from the public school system and subjected to ill-treatment, detention, expulsion, and torture. In addition, CERD expressed concern that domestic staff of Asian origin "were subjected to debt bondage, other illegal employment practices, passport deprivation, illegal confinement, rape and physical assault" (ibid.). The Committee recommended that Kuwait should "take

steps to guarantee the enjoyment by individuals belonging to vulnerable groups of foreigners, including foreign domestic servants, of the rights enshrined in the Convention without any discrimination" (ibid., para. 380).

40. In examining the report of Nigeria (CERD/226/Add.9), CERD inquired into the rights and guarantees of non-citizens under the Nigerian Constitution and why a distinction was made in national legislation between citizens of Nigeria by birth and other Nigerians. CERD emphasized that under article 5 of the Convention, States "had an obligation to guarantee the civil, political, economic, social and cultural rights of the whole population and not just of citizens" (ibid., para. 314). Furthermore, CERD "recommended that national legislation be brought into full compliance with the provisions of the Convention, in particular regarding ... the effective enjoyment of the rights set forth in article 5" (ibid., para. 327).

41. CERD examined a subsequent report of Nigeria (CERD/C/263/Add.3 and CERD/C/283) at its forty-seventh session in 1995. In connection with article 1 of the Convention, CERD "noted that section 39 (1) of the 1979 Nigerian Constitution provided for the protection of citizens against discrimination, but did not cover non-citizens or provide protection against discriminatory actions or practices outside the governmental sector" (A/50/18, para. 602).

42. At its forty-second session in 1993, CERD also examined the report of Qatar (CERD/C/207/Add.1). With respect to article 2 of the Convention, CERD inquired whether article 9 of the Constitution of Qatar, which guaranteed equality of all individuals in regard to their rights and obligations, also applied to non-citizens and whether non-Arabs were able to acquire Qatar nationality, whether foreign workers were discriminated against, and whether the Government intended to adopt legislation prohibiting discrimination against foreign workers. With respect to article 5 of the Convention, CERD expressed concern about "whether free choice of employment was guaranteed to foreigners, whether foreign workers had access to all professions and trades, whether the Government envisaged measures to eliminate differences between citizens and foreign workers concerning access to all trades, whether non-citizens were eligible to receive social security benefits, and whether freedom to leave the country and return was guaranteed to non-citizens"

(A/48/14, para. 91). CERD explicitly noted that "legislation restricting non-Arab lawyers from pleading a case before the courts was discriminatory" (ibid.).

43. CERD examined the report of Italy (CERD/C/237/Add.1) at its forty-sixth session in 1995. Regarding article 5 of the Convention, CERD expressed concern that legislation concerning political asylum for non-European Union citizens might be "more restrictive in matters relating to the status and employment of the people concerned than the ordinary Italian legislation in those areas" (A/50/18, para. 83). CERD also expressed concerns "about some cases involving the ill-treatment of foreigners of non-[European] Community origin by police officers and prison staff" (ibid., para. 101).

44. CERD considered the report of the United Arab Emirates (CERD/C/279/Add.1) at its forty-seventh session in 1995. With respect to article 5 of the Convention, CERD "asked to what extent foreign workers were entitled to have their children join them and to have them educated in their own language, and whether those children were free to practise their religion" (ibid., para. 550). CERD also inquired into the content of bilateral agreements between the United Arab Emirates and other countries regarding the status of foreign workers. Members of CERD "expressed their deep concern at information from various sources that foreign workers, particularly women from Asian countries, were subjected to inhuman treatment" (ibid.). CERD also asked whether aliens living in the United Arab Emirates had the right to assemble freely and practise their culture. CERD recommended that the United Arab Emirates "show the utmost diligence in preventing acts of ill-treatment being committed against foreign workers, especially foreign women domestic servants, and take all appropriate measures to ensure that they are not subjected to any racial discrimination" (ibid., para. 570).

3. Convention on the Rights of the Child

45. The Convention on the Rights of the Child states that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". In addition, the Convention requires States Parties to:

"respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's

race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" (art. 2.1).

46. The Convention applies to all children regardless of their race or citizenship status. Because States have an obligation to "each child within their jurisdiction", States may not distinguish between children based on their citizenship or race; all children under the jurisdiction of the State must be treated equally.

4. International Convention on the Protection of All Migrant Workers and Members of Their Families

47. A major development with respect to the rights of non-citizens occurred when the General Assembly adopted the International Convention on the Protection of All Migrant Workers and Members of Their Families by its resolution 45/158 of 18 December 1990. The Convention was the result of a request by the Economic and Social Council (ECOSOC) to the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the condition of migrant workers. 9/ The Sub-Commission, in its resolution 6 (XXVI) of 19 September 1973, appointed Ms. Halima Warzazi as Special Rapporteur to prepare a study on the exploitation of labour through illegal migration. Her study 10/ recommended, *inter alia*, that the United Nations should be involved in order to ensure that all humanitarian aspects of the problem of the exploitation of migrant workers are covered.

48. The Migrant Workers Convention covers all migrant workers and their families and provides for: non-discrimination with respect to rights of migrant workers (art. 7), the assurance of fundamental human rights (arts. 8-24), equality of treatment between nationals and migrant workers in regard to work conditions and pay (art. 25), the right to participate in trade unions (art. 26), equal access to social security (art. 27), right to emergency medical care (art. 28) and equality of access to public education (art. 30). In addition, States parties must ensure respect for workers' cultural identity (art. 31) and inform migrant workers of their rights under the Convention (art. 33).

49. The pace of ratification of the Migrant Workers Convention has not been particularly rapid. As of 5 May 1999, the Convention had been ratified or acceded to by 11 States - Azerbaijan, Bosnia and Herzegovina, Cape Verde, Colombia, Egypt, Mexico, Morocco, the Philippines, Seychelles, Sri Lanka and

Uganda - and signed by Bangladesh, Chile, and Turkey (20 States parties are required for the Convention to come into force). In order to encourage ratification of the Convention, the Secretary-General, the Commission on Human Rights and the Sub-Commission have called upon all States to consider signing and ratifying or acceding to the Convention as a matter of priority. Because migrant workers are non-citizens, and therefore are included in any instruments regarding the rights of non-citizens, they are included in the analysis of this working paper. For a more thorough discussion of the specific problems facing migrant workers and the ways of overcoming impediments to ratification of the Migrant Workers Convention, see the addendum to this document.

5. Convention on the Elimination of All Forms of Discrimination against Women

50. The Convention on the Elimination of All Forms of Discrimination against Women establishes the rights of women with regard to nationality. These rights become particularly important when a woman marries a national of a country other than her own. In order to protect women's nationality, article 9 of the Convention provides:

> "1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
>
> "2. States Parties shall grant women equal rights with men with respect to the nationality of their children."

51. The Women's Convention focuses on preventing the loss of women's nationality because, as the Committee on the Elimination of Discrimination against Women (CEDAW) noted in its general recommendation 21 on equality in marriage and family relations, adopted at its thirteenth session in 1992,

> "Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and

a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality." 11/

6. International Law Commission

52. The International Law Commission has sought to develop an instrument regarding the impact of State succession on the nationality of natural and legal persons since 1993. At its forty-ninth session held in Geneva from 12 May to 18 July 1997, the Commission provisionally adopted the text of draft articles on Nationality of natural persons in relation to the succession of States (A/52/10, chap. IV.C). Part I of the draft articles applies to all cases of State succession and conflicts of nationality arising therefrom; Part II pertains to the implementation of these provisions in specific instances of State succession.

53. The draft articles on Nationality of natural persons in relation to the succession of States are primarily concerned with the prevention of statelessness. Article 1 of the draft articles is the foundation for preventing statelessness. Specifically, article 1 provides that: "[e]very individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present draft articles".

54. According to article 4, habitual residents of the successor State are presumed to acquire nationality of the successor State on the date of succession. Article 11 places the unity of the family above the matter of habitual residence, stating that States concerned shall take all appropriate measures to allow families to remain together or to be reunited. According to article 12, all children born after succession have the right to the nationality of the territory in which they are born. According to article 14, the method of determining nationality shall be non-discriminatory. Article 15 follows the non-discrimination clause by prohibiting arbitrary decisions concerning nationality issues, stating that persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State

or any right of option, to which they are entitled in relation to the succession of States. Further procedural requirements are set forth in article 16, which states that:

> "[a]pplications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option in relation to the succession of States shall be processed without undue delay and relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review."

55. The draft articles clearly, comprehensively and procedurally prevent statelessness upon succession of a State. States are not required, however, to grant nationality to individuals having no effective link with the State unless this would result in treating those persons as if they were stateless.

7. International Criminal Court

56. On 17 July 1998, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court adopted the Rome Statute of the International Criminal Court (A/CONF.183/9). Article 5 enumerates four crimes that fall within the jurisdiction of the Court: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. Article 6 defines genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such" (the language used by the Statute to define "genocide" is taken directly from the 1948 Convention on the Prevention and Punishment of the Crime of Genocide). Therefore, acts intended to destroy a national, ethnical, racial or religious minority are crimes within the jurisdiction of the Court. In addition, under article 7 (h), "[p]ersecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... or other grounds that are universally recognized as impermissible under international law" is also considered a crime against humanity. Because non-citizens are ordinarily of a different national group, the International Criminal Court will apparently protect non-citizens from serious abuses committed with intent to cause annihilation of the group, as well as persecution.

57. As of 5 May 1999, two States - Senegal and Trinidad and Tobago - had ratified the Rome Statute.

B. Regional developments since 1985

58. In addition to the developments at the global level since the 1985 Declaration there have been very significant regional developments concerning the rights of non-citizens, particularly in Europe.

1. European Convention on Human Rights and its jurisprudence

59. "The provisions of the European Convention on Human Rights (European Convention) are in principle applicable without any distinction to citizens within any given State, citizens of other member States, aliens or stateless persons." 12/ The European Convention does not, however, cover certain rights pertaining to non-citizens. For example, there is no right to be admitted to a country and no protection from deportation or other removal. 13/

60. The European Convention in article 14 forbids discrimination, stating that:

> "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion political or other opinion, national or social origin, association with a national minority, property, birth or other status."

61. The Seminar on Exclusion, Equality Before the Law and Non-Discrimination organized by the Council of Europe in 1994 noted that

> "Article 14 [of the European Convention on Human Rights] does not forbid every difference in treatment. Equality does not necessarily mean identical treatment in every instance. A differentiation does not constitute discrimination if the aim is to achieve a purpose which is legitimate and if the criteria used are reasonable and objective ... Only differentiation which is not factually justified is inadmissible. According to the European Court's established case-law a distinction is discriminatory ... if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realized'." 14/

62. In addition, article 16 of the European Convention states that nothing in article 14, among others, "shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activities of aliens". 15/

63. In 1997 the European Court of Human Rights in *Bouchelkia v. France* dealt with the rights of non-citizens, particularly in the context of deportation. 16/ Mr. Bouchelkia was born in Algeria in 1970 and emigrated to France with his mother at age two. In 1990, Mr. Bouchelkia was ordered deported because of a criminal conviction for rape in 1987. Mr. Bouchelkia applied to the European Court of Human Rights to find a violation of article 8 of the European Convention, which states that "(1) [e]veryone has the right to respect for his private and family life ... [and] (2) [t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security ..."

64. The Court found no such violation. The Court concluded that the interference in Mr. Bouchelkia's family life "had aims which were entirely compatible with the Convention, namely 'the prevention of disorder or crime'". 17/ The Court further stated:

> "[I]t is for the Contracting States to maintain public order in particular by exercising the right as a matter of well-established international law and subject to their treaty obligation, to control the entry and residence of aliens. For that purpose they are entitled to order the expulsion of such persons convicted of criminal offences." 18/

2. European Charter for Regional or Minority Languages

65. The European Charter for Regional or Minority Languages clearly differentiates between "minorities" and "non-citizens" in its definition of "regional or minority languages". Article 1 of the Charter states that the term "'regional or minority languages' ... does not include ... the languages of migrants."

66. In 1995, the Council of Europe Press published a booklet entitled "Tackling racism and xenophobia: practical action at the local level", one of a series of booklets accompanying the report *Community and Ethnic Relations in Europe* and containing an account of an expert meeting held in Berlin in 1993 on practical action at the local level to combat racism and xenophobia. Whereas the European Charter for Regional or Minority Languages does not apply to migrants, according to the booklet, the Council of Europe considers that "community relations" includes all aspects of the relations between migrants or ethnic groups of "immigrant origin" and the host society. Although it is

unclear how far back the Council would trace "immigrant origin", it is conceivable that "community relations" is intended to include both migrants and national minorities.

67. Other relevant developments include Recommendation 1134 (1990) on the rights of minorities adopted by the Parliamentary Assembly of the Council of Europe, Recommendation No. R (92) 12 on community relations, adopted in 1992 by the Committee of Ministers, the recommendations of the Committee of Inquiry into Racism and Xenophobia of the European Parliament (1991), and the resolution of 5 October 1995 of the European Council and the representatives of the Governments of the member States on the fight against racism and racial discrimination in the fields of employment and social affairs, and the 1990 Copenhagen Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Cooperation in Europe.

3. European Convention on Nationality 19/

68. One of the most significant norm-setting developments since 1985 was the European Convention on Nationality, adopted by the Council of Europe on 6 November 1997. Article 4 of that Convention lists the principles upon which the rules of nationality of each State party shall be based, stating that:

> "(a) everyone has the right to a nationality; (b) statelessness shall be avoided; (c) no one shall be arbitrarily deprived of his or her nationality; [and] (d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse."

69. The European Convention on Nationality also establishes the right to nationality of stateless persons. Article 6 states:

> "1. Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by ... (b) foundlings found in its territory who would otherwise be stateless.
>
> "2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality ...
>
> "..."

"4. Each State Party shall facilitate in its internal law the acquisition of its nationality for ... (g) stateless persons and recognized refugees lawfully and habitually resident on its territory."

4. European Convention on the Participation of Foreigners in Public Life at Local Level

70. The Convention on the Participation of Foreigners in Public Life at Local Level, considering that "the residence of foreigners on the national territory is now a permanent feature of European societies", provides for freedoms of expression, assembly and association "on the same terms as to its own nationals" (chap. A, art. 3), allows for "consultative bodies to represent foreign residents at local level" (chap. B), and grants the "right to vote in local authority elections" (chap. C).

71. As of 5 May 1999, the Convention on the Participation of Foreigners in Public Life at Local Level had been signed by eight countries (Cyprus, Denmark, Finland, Italy, the Netherlands, Norway, Sweden and the United Kingdom) and had been ratified by four (Italy, the Netherlands, Norway and Sweden). The Convention entered into force on 5 January 1997.

C. Issues not adequately covered by the 1985 Declaration

1. Distinctions among non-citizens

72. Increasing distinctions are being made between different categories of non-citizens. This phenomenon is a particularly prevalent practice of supernational political or economic unions, such as the European Union 20/ and the North American Free Trade Agreement (NAFTA). 21/ As Mr. Banton, Chairman of CERD, stated in his letter to the Sub-Commission, "such developments raise questions from the perspective of the International Convention on the Elimination of All Forms of Racial Discrimination" (E/CN.4/Sub.2/1997/31, annex, p. 4).

73. In some respects these problems are not new. Baroness Elles noted in 1977 that violations had continued in many parts of the world, both extensively and frequently, against the human rights of non-citizens. 22/ In December 1997, the United Nations Seminar on Immigration, Racism, and Racial Discrimination concluded that "many countries had experienced an upsurge in racism, racial discrimination and xenophobia towards, and violence against, migrants and immigrants" (E/CN.4/1998/77/Add.1, annex, para. 8). Baroness Elles, in her study on the rights of non-citizens, concurred, stating that "[t]he individual who most frequently, both in point of time and of

place, gets singled out for distinction from his fellow man is the alien". 23/ Likewise, Mr. Asbjörn Eide, in his study for the Sub-Commission, noted in 1989 that:

> "[p]roblems related to aliens ... are sometimes cast in terms of race. Here, as in many other contexts, the notion of 'race' is used in a vague and imprecise way. Aliens often ... belong to different cultures and are sometimes of a different colour. The greater the apparent differences to the population in the country of residence, the more likely they are to be exposed to xenophobic sentiments and behaviour from segments of that population." 24/

74. The Human Rights Committee has noted that "States parties have often failed to take into account that each State party must ensure the rights in the Covenant to 'all individuals within its territory and subject to its jurisdiction'". 25/ Furthermore, Baroness Elles concluded that:

> "[t]he problem of the protection and treatment of aliens is not transient, temporary, or local, but continuing and universal. It is not an isolated problem, in point of time or of place, and therefore a universal approach is needed and an effort to reach universal consensus on this problem must be made." 26/

75. The rights of non-citizens enumerated in international instruments have been neither adequately nor universally protected and promoted. Baroness Elles concluded further that "[t]he application of the provisions of international human rights instruments to aliens is unclear and uncertain, and existing means of implementation inadequate". 27/ For this reason, CERD should consider expressly articulating the rights of individuals who are not citizens of the country in which they live and making more explicit the incorporation of protections for non-citizens.

2. Gypsies/Roma

76. Gypsies (Roma) pose a special problem in areas of race and non-discrimination. Gypsies are not aliens per se, but their citizenship rights are often not recognized. Further complicating the issue surrounding the rights of Gypsies is the concept of Gypsies as a "national minority" - a term which does imply citizenship.

77. Special concerns regarding Gypsies have recently begun to be considered seriously by the international community. In 1991, the Congress of Local and

Regional Authorities of Europe (CLRAE) of the Council of Europe organized a hearing entitled "The Gypsy people and Europe: the continuation of the tradition in a changing Europe" as part of the European Gypsy Festival; the hearing attracted 100 participants. 28/

78. Two major accomplishments regarding Gypsies took place in 1993. CLRAE adopted resolution 249 - Gypsies in Europe: the role and responsibility of local and regional authorities. This resolution provided for the establishment of the Network of Cities, a small core of cities which is to act as a "testing ground for good practice and sound examples [regarding Gypsies] to be developed through dialogue and exchange of experience". 29/ Also in 1993, two important decisions of relevance to Gypsies were taken at the meeting of European heads of State and Government in Vienna: the Council of Europe was instructed to draw up legal instruments in support of minorities and to launch an action plan and international campaign against racism, xenophobia and intolerance. 30/ From this statement, it appears that Gypsies are considered "minorities" rather than "non-citizens" or "migrants". Substantiating this claim is the statement by the Deputy Secretary-General of CLRAE Mr. Leuprecht, that:

> "the Council of Europe was fully aware of the need to avoid any definition of minorities that might contain further seeds of discrimination and exclusion. Extreme care would have to be taken to ensure that the concept of national minority was not interpreted in such a way as to exclude Gypsies." 31/

79. By 1994, CLRAE was able to attract approximately 200 people from some 20 European countries to a conference entitled "Towards a tolerant Europe: the contribution of Gypsies". The debates at the conference focused on dialogue between local authorities and Gypsies and the future for Gypsies as citizens of a democratic Europe. Following the conference, CLRAE concluded, "At a national level there can be no meaningful action without granting citizenship of the country of residence and freedom of movement [to Gypsies]." 32/

80. The 1994 conference resulted in two major proposals: the drafting of a covenant between Gypsies and the European institutions, and the introduction of "a policy to stabilize Gypsy populations by granting them permanent

residence rights which would allow them to solve their housing and health problems and satisfy their needs for education and vocational training." 33/

81. Perhaps the most significant development in regard to the situation of Gypsies in Europe is the development of a plan of work by the Specialist Group on Roma/Gypsies of the Committee of Ministers of the Council of Europe. 34/ The group has identified "human rights problems (discrimination on ethnic grounds, acts of violence, police behaviour and attitudes, access to rights, law enforcement, racism, racial attacks and incitement to racial hatred) [and] legal status (nationality and citizenship, minority rights)" as among the "main problems facing Roma/Gypsies in Europe today". 35/ In response to these and other problems facing Gypsies, the "Group will consider the possibility of drawing up in due course a comprehensive report on the situation of Roma/Gypsies in Europe". 36/

3. Trafficking in women and children

82. The 1985 Declaration on the Rights of Non-Citizens did not focus on trafficking in women and children. There had been some developments, however, prior to 1985: in 1951, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Trafficking Convention) entered into force. The Trafficking Convention cited four international instruments which were already in force at that time: (i) the International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic; (ii) the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic; (iii) the International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children; and (iv) the International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age. The purpose of the Trafficking Convention was to consolidate those four instruments.

83. Article 17 of the Trafficking Convention states:

> "The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution."

Specifically, article 17 requires States to enact legislation to protect women and children while travelling, to warn the public of the dangers of

trafficking, to take measures to prevent trafficking at ports of entry, and to make sure that the proper authorities are aware of the arrival of women who appear to be trafficking victims. Under article 19, countries agree to care for and repatriate trafficking victims.

84. A trafficking provision was included in the 1979 Convention on the Elimination of All Forms of Discrimination against Women, which has been ratified by 72 States. Article 6 reads: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."

85. The 1989 Convention on the Rights of the Child calls for the elimination of trafficking in children for any purpose. Article 11 requires States parties to "take measures to combat the illicit transfer and non-return of children abroad" Article 35 requires States parties to "take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form". Article 36 continues: "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."

86. In addition to those treaties, there have been a number of efforts to improve international mechanisms to stop trafficking. For example, in October 1994, the International Organization for Migration organized an international seminar on international responses to trafficking in migrants.

87. For the past few years, the International Labour Organization (ILO) has been actively involved in finding solutions to the problem of trafficking. In May 1996 the ILO collaborrated with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Organization for Security and Cooperation in Europe (OSCE) to organize a conference in Geneva to examine issues of population movements in the Commonwealth of Independent States, and devoted particular attention to irregular migration. 37/ In June 1996, in collaboration with the European Union, the ILO held a conference in Vienna to help design common instruments to combat trafficking in women in Europe. The ILO also prepared the Declaration and Agenda for Action adopted by the World Congress Against Commercial Exploitation held in Stockholm in August 1996. The Congress included representatives of 122 countries, as well as numerous NGOs.

88. In 1998 the International Programme on the Elimination of Child Labour (IPEC) of the ILO compiled an analysis on child trafficking in eight Asian countries. Following this initial study, IPEC has been actively involved in action against child trafficking both at the national level and subregional levels. In 1998, at the national level IPEC established the National Plan of Action against Trafficking in Children and their Commercial Sexual Exploitation in Nepal. 38/ At the subregional level, IPEC proposed the Framework for Action, "Trafficking in Children for Labour Exploitation in the Mekong Sub-Region", at a consultation held in Bangkok. The Framework for Action includes prostitution as a form of labour exploitation. 39/

89. Trafficking in women is a global problem which takes place both between and within regions. 40/ Women and children become vulnerable to trafficking because of social and economic relations of power, including the "economic disparity between the richest States or regions and the poorest". In many countries, large proportions of prostitutes are illegal immigrants - often trafficked women and girls. 41/

90. Kathleen Barry has addressed the global proliferation of prostitution, and the increase in trafficking in women, and believes that trafficking and prostitution are perpetuated by international sex industries. In 1991 Barry (in collaboration with Wassyla Tamzali of UNESCO) developed the proposed Convention against Sexual Exploitation:

> "The proposed Convention would require States Parties to take all appropriate measures to provide victims of sexual exploitation, including prostitution and traffic in women, with refuge and protection and to repatriate those who desire to be repatriated. Employers who sexually exploit women in the migrating process will be held criminally liable." 42/

91. Because sexually exploited women often lack proof of their citizenship or are stateless when they finally escape their exploiters, and because stateless persons are often not recognized by the new country in which they find themselves, the proposed convention provides that: "refugee status shall be granted to all victims of sexual exploitation, whether they have entered the country legally or illegally." 43/ The proposed article 2 specifically states that trafficking is a form of sexual exploitation. 44/

92. The Working Group on Contemporary Forms of Slavery of the Sub-Commission has recognized the variety of circumstances in which trafficking occurs, adopting at its twenty-second session in 1998 a recommendation dealing with "Prevention of the transborder traffic in women and girls for sexual exploitation". In that recommendation, which became section II of resolution 1998/19, the Sub-Commission explicitly declared that "transborder trafficking of women and girls for sexual exploitation is a contemporary form of slavery and constitutes a serious violation of human rights", citing the various conventions against slavery and forced labour as well as many other instruments. The Working Group is holding a Consultation on Trafficking, Prostitution and the Global Sex Industry from 21 to 23 June 1999, followed by the twenty-third session of the Working Group which will certainly make recommendations on these issues to the fifty-first session of the Sub-Commission.

4. The right to leave and return

93. Article 13 of the Universal Declaration of Human Rights sets forth the basic right to freedom of movement, and does not distinguish between citizens and not-citizens. Article 13 states that: "[e]veryone has the right to freedom of movement and residence within the borders of each State" and that "[e]veryone has the right to leave any country, including his own, and to return to his country".

94. Similar provisions are set forth in the International Covenant on Civil and Political Rights, although the Covenant appears to draw a distinction between documented and undocumented aliens. Article 12 states:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> "2. Everyone shall be free to leave any country, including his own.
>
> "...
>
> "4. No one shall be arbitrarily deprived of the right to enter his own country." (emphasis added.)

95. The Human Rights Committee also held that countries may not apply different immigration standards based on sex. In Shirin Aumeerudy-Cziffra et al. v. Mauritius, 20 Mauritian women contested the immigration law adopted by the Government which provided that if a Mauritian woman married a man from

another country, the husband must apply for residence in Mauritius and that permission may be refused. If, however, a Mauritian man married a foreign woman, the foreign woman was entitled automatically to residence in Mauritius. The Committee held that Mauritius had violated the Covenant by discriminating between men and women without adequate justification. 45/

96. Regional instruments contain similar provisions regarding the freedom of movement. The African Charter on Human and Peoples' Rights provides for the freedom of movement within the borders of a State where an individual lawfully resides (art. 12 (1)), and the general right to leave and return (art. 12 (2)). Non-nationals may only be deported in accordance with law (art. 12 (4)) and mass expulsions of non-citizens are prohibited (art. 12 (5)).

97. While most human rights instruments address freedom of movement in a single article or even more tangentially, two declarations address the issue in a more comprehensive fashion: the Declaration on the Right to Leave and the Right to Return, adopted by a colloquium held in Uppsala, Sweden in 1972, and the Strasbourg Declaration on the right to leave and return adopted by a meeting of experts held in Strasbourg in 1986.

98. More recently, Mr. Volodymyr Boutkevitch prepared a working paper on the right to freedom of movement and related issues in implementation of decision 1996/109 of the Sub-Commission (E/CN.4/Sub.2/1997/22). Mr. Boutkevitch's working paper discussed the right to freedom of movement and related issues in international legal instruments, the right to freedom of movement at the national level, and the state of freedom of movement in the last 10 years.

V. DEVELOPING FURTHER HUMAN RIGHTS STANDARDS AND IMPLEMENTATION PROCEDURES IN REGARD TO NON-CITIZENS: TENTATIVE CONCLUSIONS AND RECOMMENDATIONS

99. Continued discriminatory practices against non citizens demonstrate the absence of effective standards regarding the rights of individuals who are not citizens of the country in which they live.

100. States should be encouraged to abide by the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live.

101. CERD should consider how to interpret article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Discrimination, so

as to avoid undermining the protections for non-citizens under other human rights treaties and within the Convention itself. CERD should be encouraged to prepare a general recommendation on the rights of non-citizens. One objective of a further study by the Sub-Commission might be to help formulate such a general recommendation, in cooperation with CERD.

102. CERD is correct in noting that "distinctions are being made between different categories of non-citizens" (E/CN.4/Sub.2/1997/31, annex, p. 4) and that "these distinctions may amount to total exclusion of persons, depriving them of the most fundamental rights and having racist implications" (ibid.). Such distinctions raise questions from the perspective of the Convention, in spite of article 2 (1), and this subject deserves further study in light of recent developments.

103. CERD should consider expressly articulating the rights of individuals who are not citizens of the country in which they live and to make more explicit the incorporation of protections for non-citizens.

104. The Human Rights Committee has recognized the full rights of non-citizens under the Covenant in its general comment 15 on the position of aliens under the Covenant. Because aliens tend to be of a minority race, discrimination against aliens has some of the same underlying tendencies as racism, and there is a substantial relationship between discrimination on the basis of race and discrimination against aliens. Therefore, it is desirable for CERD to coordinate its work with the substance of general comment 15 and other efforts of the Human Rights Committee to protect the rights of non-citizens. For example, a new general recommendation on the rights of non-citizens should take into account the terms of the Convention, the experience of CERD in reviewing States parties' reports and the experience of the Human Rights Committee, as well as other sources of relevant jurisprudence such as that of other treaty bodies and the European Court of Human Rights. Further research needs to be devoted to gathering and analysing those experiences and relevant jurisprudence.

105. The rights of non-citizens should be explicitly addressed during the upcoming World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance.

106. This working paper should be transmitted to CERD in its present form for its advice and reactions. It would be particularly useful if CERD could

indicate the extent to which the present working paper fulfils CERD's request of 1997, and in particular address the following questions: (i) Are there subjects or areas of inquiry that should be pursued? (ii) Does a further working paper need to be prepared on this topic and if so, on what issues? (iii) Would it be helpful for the working paper to include an initial draft of a further general recommendation on the rights of non-citizens, in cooperation with CERD and for the consideration of CERD? (iv) Does CERD consider that a full study of this subject would be useful?

107. If CERD determines that a full study would be helpful, the Sub-Commission should transmit this working paper, along with relevant comments from CERD, to the Commission, along with a proposal for a full study to be undertaken.

Notes

1/ Mr. Weissbrodt thanks Ms. Amy Schroeder and Mr. Bret Thiele for their assistance in preparing this working paper.

2/ Richard B. Lillich, *The Human Rights of Aliens in Contemporary International Law*, 1984, p. 43.

3/ Ibid., p. 46.

4/ Most of the provisions in Part III of the Covenant refer specifically to the "the right of everyone" (emphasis added).

5/ For a more thorough treatment of non-nationals under the International Covenant on Economic, Social and Cultural Rights, see John A. Dent, Research paper on the Social and Economic Rights of Non-Nationals in Europe, 1998 (commissioned by the European Council on Refugees and Exiles).

6/ Baroness Elles, International Provisions Protecting the Human Rights of Non-Citizens, United Nations publication, sales No. E.80.XIV.2.

7/ The Office of the United Nations High Commissioner for Refugees (UNHCR) was established specifically to provide for the special needs and protection of persons found to be refugees under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

8/ Article 12, paragraph 3, of the Covenant states that the right to freedom of movement "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant".

9/ Resolution 1789 (LIV) of 18 May 1973. See also Ryszard Cholewinski, *Migrant Workers in International Human Rights Law*, 1997.

10/ *Exploitation of Labour through Illicit and Clandestine Trafficking*, United Nations publication, Sales No. E.86.XIV.1. See also Cholewinski, ibid.

11/ See also the Convention on the Nationality of Married Women, adopted by General Assembly resolution 1040 (XI) of 29 January 1957.

12/ Exclusion, Equality Before the Law and Non-Discrimination. Proceedings of a seminar organized by the Secretariat General of the Council of Europe in cooperation with the International Center for sociological, criminal and penitential research and studies (INTERCENTER) of Messina, Italy (Taormina Mare, Italy, 29 September-1 October 1994), p. 135. Also published in French under the title Exclusion, égalité devant la loi et non-discrimination.

13/ See European Convention on Nationality, ETS No. 166, Strasbourg, 6 November 1997, but see also Protocol No. 4 to the European Convention on Human Rights, article 4 ("Collective expulsion of aliens is prohibited.").

14/ See *supra* note 12.

15/ In addition, "customary international law provides evidence that States are free to restrict the political activity of aliens". See *supra* note 124.

16/ *Bouchelkia* v. *France*, European Court of Human Rights, judgement of 29 January 1997.

17/ Ibid.

18/ Ibid. At the Seminar on Exclusion, Equality Before the Law and Non-Discrimination, it was suggested that "'integrated aliens' should no more or, only under very exceptional circumstances, be liable to expulsion than nationals. Mere nationality may not constitute an objective and reasonable justification for the existence of a difference as regards the admissibility of expelling someone from what, in both cases, may be called his 'own country'". See also the International Convention on the Rights of All Migrant Workers and Members of Their Families, art. 25.

19/ Asbjörn Eide has thoroughly examined the right to a nationality in his article "Citizenship and international law with specific reference to human rights law: status, evolution and challenges". Eide includes a history of the concept of citizenship and its development over time, and also attempts to answer the question: "What are the rights of a given individual in regard to the country in which he or she lives?".

20/ See Nora V. Demleitner, "The Fallacy of Social 'Citizenship', or the Threat of Exclusion", *Georgia Immigration Law Journal*, vol. 12 (1997), pp. 35, 59.

21/ See North American Free Trade Agreement, 8 December 1993, United States-Canada-Mexico, chap. 16, art. 1603, para. 1.

22/ See supra note 6.

23/ Ibid., para. 293.

24/ Asbjörn Eide, "Study on the achievements made and obstacles encountered during the decades to combat racism and racial discrimination" (E/CN.4/Sub.2/1989/8), para. 370.

25/ General comment 15 (citing the International Covenant on Civil and Political Rights, article 2 (1)).

26/ Elles, supra note 6, para. 366 (1).

27/ Ibid., para. 366 (20).

28/ CLRAE, Congress Newsletter, No. 1, January-February 1992. The Newsletters are available on-line at www.coe.fr/cplre/newsletter.

29/ CLRAE, Congress Newsletter, No. 4, August-September 1994.

30/ Ibid.

31/ Ibid.

32/ Ibid.

33/ Ibid.

34/ Plan of Work of the Specialist Group on Roma/Gypsies (MG-S-ROM), Council of Europe, Committee of Ministers, 587th meeting of the Ministers' Deputies, 1 April 1997, appendix 3, item 6.3. See www.coe.fr/cm/dec/1997/587/587.a3.html.

35/ Ibid., para. 2 (b) and (c).

36/ Ibid., para. 4.

37/ See Bimal Ghosh, Huddled Masses and Uncertain Shores: Insights into Irregular Migration, 1998, p. 134.

38/ IPEC-ILO, Fighting child trafficking at national level, action in Nepal. See www.ilo.org/public/english/90ipec/publ/expls-98/exampl13.htm.

39/ "Trafficking in Children for Labour Exploitation in the Mekong Sub-region: A Framework for Action. Section 4 - The ILO-IPEC Programme Strategy to Combat Trafficking in Children for Labour Exploitation, including Child Prostitution. See www.ilo.org/public/english/90ipec/publ/traffic.htm.

40/ Kathleen Barry, The Prostitution of Sexuality, 1995, p. 165.

41/ Ibid., p. 195. "Local prostitution in Paris and in major cities throughout the world is interconnected with the traffic in women." "In 1992 it was estimated that 85 per cent of the prostitutes in the [Bois de Boulogne] were illegal immigrants ... In recent years immigrant prostitution in France has been increasingly trafficked from South America, particularly Brazil, Ecuador, Peru, and Colombia."

42/ Ibid., p. 307.

43/ Ibid., pp. 307, 308.

44/ Ibid., appendix: Proposed Convention Against Sexual Exploitation, January 1994.

45/ Shirin Aumeeruddy-Cziffra et al. v. Mauritius, Communication No. 35/1978 (9 April 1981), Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex XIII.

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Fifty-first session
Item 3 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

The Rights of Non-Citizens

Working paper submitted by Mr. David Weissbrodt in accordance with Sub-Commission decision 1998/103

Addendum

Issues relating to migrants

1. In its decision 1998/103 the Sub-Commission requested Mr. David Weissbrodt to prepare a working paper on the rights of persons who are not citizens of the country in which they live. In the decision the Sub-Commission mentioned several issues that might be considered in the working paper for further study, including ways of overcoming impediments to ratification of the International Convention on the Rights of All Migrant Workers and Members of Their Families and ways of contributing to the efforts of the working group of intergovernmental experts on the human rights of migrants of the Commission on Human Rights. The present documents respond to those two issues relating to migrants.

GE.99-13569 (E)

I. INTERNATIONAL CONVENTION ON THE PROTECTION OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

A. Context of the ratification of the Migrant Workers Convention

2. As noted in the main report (paras. 47-49) the pace of ratification of the Convention has been slow. In assessing the speed of ratification of the Convention, however, it is useful to consider the time that was required for the ratification of other human rights conventions. The Migrant Workers Convention was adopted by the General Assembly over eight years ago, and still has not entered into force. Although this is of concern, it is important to note that other conventions have taken varying amounts of time to enter into force.

3. Some conventions received enough ratifications to enter into force very quickly, while other conventions have taken a number of years to enter into force. On the one hand, the Convention on the Rights of the Child was adopted by the General Assembly on 20 November 1989 and entered into force on 2 September 1990 - less than one year later. On the other hand, two of the major conventions which comprise the International Bill of Human Rights each took nearly 10 years to enter into force. The International Covenant on Economic, Social and Cultural Rights was adopted on 16 December 1966 and did not enter into force until 3 January 1976. The International Covenant on Civil and Political Rights was also adopted on 16 December 1966, and entered into force on 23 March 1976. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment took two and a half years (1984-1987) and the International Convention on the Elimination of All Forms of Racial Discrimination took nearly three years (1966-1969).

B. Impediments to ratification of the Migrant Workers Convention

4. In order to identify obstacles to ratification and to seek ways of overcoming them, two meetings of high-level governmental experts for the African region and the Asian-Pacific region were held in Addis Ababa from 14 to 17 May 1996 and in Amman from 1 to 4 September 1997, respectively. In addition, Shirley Hune and Jan Niessen have comprehensively examined current difficulties and prospects for ratifying the Migrant Workers Convention. 1/

1. Jurisdictional conflict between the United Nations and the International Labour Organization

5. "The ILO was to be concerned with migrants as workers and the United Nations was to be concerned with their status as aliens. It would appear, however, that this agreement between the United Nations and the ILO has lost much, if not all, of its validity as a result of the adoption of the [Migrant Workers Convention]." 2/ Some nations have stated that a new convention on the rights of migrant workers was not needed due to the already existing ILO provisions. 3/ They specifically cite ILO Convention Nos. 97 and 143 as two existing multilateral treaties on the rights of migrant workers, 4/ and conclude that ratification of the new Migrant Workers Convention is not needed. 5/

2. Benefits and drawbacks of ILO

6. The ILO conventions are considered superior to the Migrant Workers Convention by some because "the unique tripartite contribution by Governments, employers, and workers to the content of ILO standards makes them a worthy foundation on which to build further safeguards for migrant workers and their families". 6/ The ILO only has, however, "limited competence to deal with such concerns as culture, education, and political participation". 7/ In addition, the Secretary-General has stated that "the standards applicable to migrants under ILO instruments represent only the minimum required for their protection". 8/

(a) Benefits of the United Nations Convention

7. The United Nations Migrant Workers Convention extends rights to a number of groups previously not covered by the ILO conventions, namely "frontier, itinerant, project-tied, specified employment and self-employed migrant workers". 9/ In addition, the Migrant Workers Convention is considered to be "the most ambitious statement to date of international concern for the problematic condition of undocumented migrants". 10/

(b) Possible duplication

8. Some analysts believe that there is duplication between ILO standards and the Migrant Workers Convention because "no two different drafting processes in international forums will ever produce identical results". 11/ Some analysts, however, conclude that this is only a problem "where the new text falls below existing standards. ... The development of human rights requires that later instruments be more favorable to individuals than earlier ones". 12/ Because the Migrant Workers Convention provides for greater rights

than existing ILO standards, it cannot be said that the Migrant Workers Convention duplicates ILO standards, although some States may not wish to extend further rights to migrants.

(c) Role of the Migrant Workers Convention in regard to undocumented migrants

9. "The prevailing view [in conventional international law] is that States may draw limits, and that they may condition the entry of foreigners into their territory upon their consent." 13/ "Opponents [of rights for the undocumented] assert ... that States should not be obliged to provide undocumented aliens anything more than minimal human rights protections because they are not party to the social contract which binds the national community." 14/

10. Because "[m]igrant workers face the gravest risks to their human rights and fundamental freedoms when they are recruited, transported and employed in defiance of the law", 15/ the prevention of illegal migration will reduce human rights abuses. Therefore, one purpose of the adoption of the Migrant Workers Convention is to discourage illegal migration. 16/ Article 68 of the Migrant Workers Convention requires States parties to "collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation". "More specifically, States parties are required to take appropriate measures ... to detect and eradicate illegal or clandestine movements; and measures to impose effective sanctions on persons, groups or entities which organize, operate or assist illegal or clandestine migration." 17/ Therefore, the Convention will ultimately serve to reduce the number of irregular migrants residing within States parties, also reducing associated costs to Governments.

11. In addition, the Convention places no restrictions on the qualifications States parties utilize to determine the admissibility of migrants. Article 79 specifically states that "[N]othing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families."

(d) Economic issues

12. According to Hune and Niessen, the major impediment to ratification of the Migrant Workers Convention is international economic, social, and political instability. Specifically, they cite low economic growth, economic restructuring of basic industries, shrinking wages, and rates of

unemployment. 18/ Due to the arrival of migrants in concentrated groups, both chronologically and spatially, as well as cultural and language differences, "Governments are less able to absorb a sizeable increase in newcomers and at the same time maintain the same level of social securities for their populace". 19/

13. It is specifically because of these perceived economic conditions, and the tendency of Governments to view migrants as an economic burden, that the rights enumerated in the Migrant Workers Convention are necessary to ensure the human rights and fundamental freedoms of migrants.

14. Further, these economic fears are unfounded. Rather than creating an economic burden, "international labour migration should be economically beneficial to both receiving and sending countries because scarce resources [such as labour] are reallocated to a more efficient or higher wage use". 20/ Scholars have observed that receiving countries specifically benefit from foreign migrant labour through labour which may be less expensive, abundantly available, effective, generally youthful, often highly skilled and willing to take on unpleasant tasks. 21/

(e) Political climate

15. According to Hune and Niessen, the political climate is currently not hospitable towards migrant workers generally. 22/ Specific political events leading to this policy orientation are: the end of the Cold War and the subsequent instability in Central and Eastern Europe, the war in the former Yugoslavia, fear of a massive East-West flow of migrants, and the focus on security and stability within and between States which migrants are apparently seen as undermining. 23/

16. The Migrant Workers Convention specifically provides for the observance of the human rights and fundamental freedoms of migrant workers, regardless of transitory instabilities in world conditions. Particularly since perceptions of migrants are often based on false information (as described in section (d) above), it is of the utmost importance that migrants be protected.

(f) General impediments

17. In addition to these obstacles, a number of more general impediments to ratification have been identified. The impediments which should be easily overcome include lack of awareness of the existence of the Convention and a false perception about the character of the Convention as well as about the

effects of ratification. 24/ While lack of awareness and false perception are pervasive, concerted educational efforts should be undertaken to combat these underlying fears upon which other claims against ratification are based.

II. RELATIONSHIP OF THE WORKING PAPER WITH EFFORTS OF THE WORKING GROUP OF INTERGOVERNMENTAL EXPERTS ON THE HUMAN RIGHTS OF MIGRANTS AND THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS

18. In its resolution 1997/15 of 3 April 1997 the Commission on Human Rights established the working group of intergovernmental experts on the human rights of migrants with a mandate to: (a) gather all relevant information from Governments, non-governmental organizations and any other relevant sources on the obstacles existing to the effective and full protection of the human rights of migrants; and (b) elaborate recommendations to strengthen the promotion, protection and implementation of the human rights of migrants.

19. The working group initially distributed a questionnaire to all States in which it inquired: What steps have been taken in order to ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Labour Organization (ILO) Convention concerning Migration for Employment (Revised), 1949 (No. 97), and the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143)?

20. The working group indicated in the report on its first and second sessions (E/CN.4/1998/76) that it expected to include the promotion of the ratification of relevant United Nations and ILO Conventions, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In the report on its third and fourth sessions (E/CN.4/1999/80) the working group noted that the Migrant Workers "Convention had not yet entered into force and efforts to promote its ratification should be intensified (para. 66)." To that end, the working group recommended the appointment by the Commission of a special rapporteur for a period of three years to advocate, promote and monitor the protection of the human rights of migrants.

21. At its fifty-fourth session the Commission on Human Rights, in its resolution 1999/44, decided to replace the working group by a Special Rapporteur on the human rights of migrants. The Special Rapporteur was requested, in carrying out his/her mandate, to give careful consideration to the various recommendations of the working group of intergovernmental experts

aimed at the promotion and protection of the human rights of migrants, and to take into consideration relevant human rights instruments of the United Nations to promote and protect the human rights of migrants.

22. The Commission has frequently admonished the Sub-Commission to avoid duplicating the work of the Commission (see, e.g., Commission on Human Rights resolution 1999/81 of 28 April 1999). Rather than duplicate the efforts of the Commission's Special Rapporteur on the human rights of migrants, the Sub-Commission should transmit the present working paper to the Special Rapporteur to assist in his/her work to promote the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and in the hope that these Sub-Commission documents will be of assistance in understanding ways of overcoming the identified impediments to ratification. It is doubtful, however, whether any subsequent study by the Sub-Commission should focus on these issues, because the present working paper has made the contribution which the Sub-Commission can realistically make, because the Special Rapporteur already has the relevant issues within the mandate, and because the very specific problems of migrants are only one aspect of the greater task of considering the rights of non-citizens.

23. The other important aspects of this topic are not covered by a special rapporteur of the Commission or other United Nations mechanism. Accordingly, in order to avoid unnecessary duplication and out of respect for the Commission's Special Rapporteur, whose mandate has greater resources and visibility than the present working paper, the working paper will focus on the other aspects of the rights of non-citizens.

Notes

1/ S. Hune and J. Niessen, "Ratifying the UN Migrant Workers Convention: Current Difficulties and Prospects", Netherlands Quarterly of Human Rights, vol. 12, No. 4 (1994), p. 12.

2/ Ryszard Cholewinski, Migrant Workers in International Human Rights Law, 1997, p. 138.

3/ United Nations Commission on Human Rights, forty-ninth session, position paper of the United States, "Measures to improve the situation and ensure the human rights and dignity of all migrant workers", 21 January 1993.

4/ ILO Convention No. 97 has been ratified by 41 States and ILO Convention No. 143 has been ratified by 18 States.

5/ Supra note 3.

6/ Cholewinski, supra note 2, p. 136.

7/ Ibid., p. 199.

8/ Ibid., p. 135, citing the report of the Secretary-General to the United Nations Commission for Social Development at its twenty-eighth session, entitled "Social integration. Pertinent regulations concerning the welfare of migrant workers and their families" (E/CN.5/1983/10).

9/ Roger Böhning, "The ILO and the New UN Convention on Migrant Workers: The Past and Future", International Migration Review, vol. 25 (1991), p. 698.

10/ Linda Bosniak, "Human Rights, State Sovereignty and the Protection of Undocumented Migrants Under the International Migrant Workers Convention", ibid., pp. 737, 740.

11/ Ibid., p. 705.

12/ Ibid.

13/ Ibid., pp. 737, 743.

14/ Ibid., p. 750.

15/ The Rights of Migrant Workers, Fact Sheet No. 24, Office of the United Nations High Commissioner for Human Rights, 1996, p. 7.

16/ G. Fonteneau, "The Rights of Migrants, Refugees or Asylum Seekers under International Law", International Migration, vol. 30 (1992), pp. 57, 58.

17/ Supra note 15, p. 8.

18/ Hune and Niessen, supra note 1.

19/ Ibid.

20/ Cholewinski, supra note 2, p. 22.

21/ Ibid., p. 23.

22/ Hune and Niessen, supra note 1.

23/ Ibid.

24/ Ibid., pp. 9, 13.